ANNOTATED

Indian Civil Court Handbook

(As amended upto 1st September, 1936)

NRISINHADAS BASU, B.L. ADVOCATE.

Author of the Indian Succession Act, the Subject-noted Index of Cases, The Indian Evidence Act, Principles and Practice of Injunctions, The Law of Receivers etc. etc.

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Supplement

The Annotated
CIVIL COURT HAND-BOOK.

VOL II

THE LAND ACQUISITION ACT, 1894*

ACT NO 1 OF 1894

RECEIVED THE G G's ASSENT ON THE 2ND FEBRUARY, 1894

An Act to amend the Law for the Acquisition of Land for Public purposes and for Companies

WHEREAS it is expedient to amend the law for the acquisition of land needed for the public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows.—

Notes.—This Act vests in the Local Government with absolute discretion in the matter, irrespective of any consideration of willingness or unwillingness of the owner to part with his property 30 C 36=7 C W N 247 The words "public purposes" is not def[illegible] "public[illegible] to the public, [illegible] 30 C 36=7 C [illegible] [com]pulsory acquisition of land for public purposes, and for companies and to determine the amount of compensation to be made on account of such acquisition 30 C. 36; 32 C. 605 P C=1 C L J. 237. If two interpretations of a section are possible that which is beneficial to the subject should be adopted A I R 1931 Mad. 50=59 M L J 911=129 Ind Cas 251 If any error in procedure has been committed, every presumption of prejudice to the party should be made 128 Ind Cas 147=A. I. R. 1930 Mad 836 Money paid to claimant under the land acquisition proceeding started by mistake cannot be recovered by Government 142 Ind Cas 171=34 Bom L. R. 791=56 B 601=A. I R 1932 Bom 386 Memorandum of appeal under the land acquisition Act requires *ad valorem* Court fee A I R 1932 Oudh 224=8 Luck 85=9 O W. N. 396, see also A I R 1934 Pat. 571 (S B)=15 P L T 548=152 Ind Cas 244

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PART I

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Land Acquisition Act, 1894:

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* Declared in force

(i) in the Santhal Parganas by Reg III of 1872 s 3 as amended by Reg III of 1899 s 3

(ii) in Upper Burma (except the Shan States) by Act XIII of 1898, s 4

(iii) in British Beluchistan, by Reg 2 of 1913 s 3

(iv) in the Angul District, by Reg 3 of 1913, s 3

This Act is applied, with modifications, to acquisition of land under Bombay Act XVI of 1925, Ben Act V of 1911 (as amended by Ben Act III of 1915, s 9), U P Act 8 of 1919, Bur Act V of 1920, Punj Act IV of 1922 and C P. Act II of 1922

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of March, 1894.

2. (1) [*Repealed by Act X of 1914*].

(2) * All proceedings commenced, officers appointed or authorized, agreements published, and rules made under the said Land Acquisition Act, 1870, shall, as far as may be, be deemed to have been respectively commenced, appointed or authorized, published, and made under this Act.

(3) Any enactment or document referring to the said Land Acquisition Act, 1870, or to any enactment thereby repealed, shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

Notes.—Whilst proceedings under Act X of 1870 were pending, Act I of 1894 came into force, *held* that, having regard to s. 2, sub-section 2, Act I of 1894, the case must be governed by the new Act. 1 C. W. N. 562, 23 C. 526.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*a*) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently

(*b*) the expression "person in

interest in compensation to be made

this Act; and a person shall be deemed to be interested in land if he is

r of a district, and

lly appointed by the

under this Act;

vil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act;

(*e*) the expression "Company" means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts 1862 to 1890, or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent †and includes a society registered under

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Of and a registered society

1912"‡§

(*f*) the e

sites in distric

the provisions of village

shall have declared, by notification in the official Gazette, that it is customary for the Government to make such provision; and

(*g*) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors

atics or idiots

same extent

could have

* Certain words before this repealed by Act

†

‡

§

itted.

Provided that—

(i) no person shall be deemed 'entitled to act' whose interest in the subject matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act,

(ii) in every such case the person interested may appear by a next friend, or in default of his appearance by a next friend the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof,

(iii) the provisions of Chapter XXXI of the Code of Civil Procedure* shall *mutatis mutandis* apply in the case of persons interested appearing before a Collector or Court by a next friend or by a guardian for the case, in proceedings under this Act, and

(iv) no person 'entitled to act' shall be competent to receive the compensation money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land, and receive and give a good discharge for the purchase-money on a voluntary sale

Clause 3 (a)—The word "land" includes things attached to the earth 30 M 151=16 M L J 551, 4 L B R 71 It includes building or charges on it as well as other interest in it 34 B 618=5 Ind Cas 621=12 Bom L R 34; 45 B 277=23 Bom L R 148 It includes trees 30 M 151 Fishery rights are not land 7 C L J 445=35 C 525

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Clause 3 (f)—Acquisition of house site for *panchamas* is public purpose 131 Ind Cas 647=1931 M W N 126=A I R 1931 Mad 361

PART II

ACQUISITION

Preliminary Investigation

Publication of preliminary notification, and powers of officers thereupon.

4 (1) Whenever it appears to the Local Government that land in any locality †is needed or †is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazetee, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorized by such Government in this behalf, and for his servants and workmen—

to enter upon and survey and take levels of any land in such locality,

to dig or bore into the sub-soil,

to do all other acts necessary to ascertain whether the land is adapted for such purpose,

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* XIV of 1882

† Inserted by Act 8 of 1923

to set out the boundaries of the land proposed to be taken, and the intended line of the work (if any) proposed to be made thereon

to mark such levels, boundaries, and line, by placing marks and cutting trenches, and

where otherwise the survey cannot be completed, and the levels taken, and the boundaries and line marked to cut down and clear away any part of any standing crop fence, or jungle

Provided that no person shall enter into any building, or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so

Notes—The only test is whether it is required for public purpose 29 B 480, 30 C 36, 38 B 565 Market value is to be considered at date of publication of notification A I R 1931 Sind 52=25 S L R 285=131 Ind Cas 222

Amendments—Amendments are not retrospective 95 Ind Cas 329=A I R 1926 Bom 369=28 Bom L R 582

Payment for damage

6 The officer so authorized shall at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief Revenue Officer of the district, and such decision shall be final

Objections

Hearing of objections

***5A** (1) Any person interested in any land which has been notified under section 4, sub section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be

(2) Every objection under sub section (1) shall be made to the Collector in writing and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall after hearing all such objections and after making such further enquiry if any as he thinks necessary, submit the case for the decision of the Local Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections The decision of the Local Government on the objections shall be final

(3) For the purposes of this section a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act

Declaration of Intended Acquisition

Declaration that land is required for a public purpose

6 (1) Subject to the provisions of Part VII of this Act 'when the Local Government is satisfied after considering the report if any, made under section 5A sub section (2)'† that any particular land is needed for a public purpose, or for a Company a declaration shall be made to that effect under the signature of a Secretary to such Government, or of some officer duly authorized to certify its orders

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority

* Section 5A has been added by Act 38 of 1923
† The words within quotations has been added by Act 38 of 1923

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land the place where such plan may be inspected

(3) The said declaration shall be conclusive evidence that the land is needed, for a public purpose or for a company as the case may be, and, after making such declaration the Local Government may acquire the land in manner hereinafter appearing

Notes—When statutory rights of an exceptional character have been created, the conditions prescribed by the statute for the exercise of such right must be strictly fulfilled 11 C L J 612=6 Ind Cas 457 2 Sind L R 68 The Act nowhere says that whether land is acquired f r a public purpose or for a Company it should be for permanent publ c purpose or for a permanent Company The declaration may be made in any form so long as the object of the acquisition is patent The jurisdiction of a Land Acquisition Collector may extend to several districts 30 C 36=7 C W N 249, 32 C 603=9 C W
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of their report as h s award and fully sign
the Collector's award are not judicial 63
section does not require boundaries to be given in the declaration 11 C W N 879 The Local Government should endeavour to avoid issuing different declarations under this section for the acquisition of portions of the same tract of land, where the declarations follow each others in rapid succession 34 C 599 The effect of a declaration under clause (3) is only to make it conclusive that the land is required for a public purpose It does not debar a Court from enquiry into the validity of the steps leading to that declaration 48 C 916=66 Ind Cas 600 The provision In section 6 (3) is not *ultra vires* of the Indian Legislature A I R 1925 Mad 837=49 M 237=48 M L J 204=86 Ind 485 Provisions of the Act can not be used as mere cloack for effecting compulsory private transfers under guise of public purpose 97 Ind Cas 471=A I R 1926 Mad 1099=51 M L J 338 Court can enquire into validity of steps leading upto declaration A I R 1921 Cal 159=48 C 916 The construction of a public road is a *prima facie* public purpose 97 Ind Cas 471=51 M L J 338=A I R 1926 Mad 1009 Even insignificant or nominal contribution by Government satisfies proviso A I R 1927 Mad 245=50 Mad 304=51 M L J 849, see also A I R 1931 Mad 361=131 Ind Cas 647 Inam land on declaration under s 6 stands on same footing as any freehold land A I R 1933 Nag 208=142 Ind Cas 364

Cases—63 P R 1907, 123 P R 1908, 9 C W N 454 P C, 4 C L J 256 26 B 1 P C, 3 C L J 169=10 C W N 289, 3 L B R 117

After declaration Collector to take order for acquisition

7 Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the Local Government, or some officer authorised by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land

Notes—Where a declaration is made under the provisions of sections 6 and 7 and an officer, for instance the Deputy Commissioner, is directed to take order for the acquisition of the said land, it is competent to the officer, appointed in the Government notification to take order for the acquisition of the property to direct one of its subordinate officers to make enquiry and to report to him as this
be illegal 123 P R
nded acquisition under
ly conditions precedent

Cases—7 C W N 249, 123 P R 1908

Land to be marked out measured, and planned

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4), to be marked out He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same

Notes—Where land actually taken up by the Government is different from that mentioned and the declaration issued under the Act, the proceedings of the Collector are vo d and there can be no valid reference to the Civil Court 8 C L. J. 39

9 (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him

Notice to persons interested

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear, personally or by agent, before the Collector at a time and place herein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements made under section 8 The Collector may in any case require such statement to be made in writing, and signed by the party or his agent

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and, on all such persons known or believed to be interested therein or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address, or place of business, and registered under Part III of the Indian Post Office Act, 1866 *

Notes—Notice under this section inviting claims for compensation for lands acqu red should contain the material facts, which would enable the land owner to identify the land 11 C W N 316=5 C L. J 669=34 C 470 Notice under this sect on is essential to the exercise of the Collector s jurisdiction 34 C 470 But non serv ce of notice is not fatal where the party complaining has knowledge of the same 1921 Cal 513 It is intended by section 9 clause (2) that the owner of the property about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, reasonable and proper award and based upon a proper enquiry after the proper means have been placed before him for holding such enquiry 8 A L J 115 Where the Government notified the plaintiff's land to be acquired under the Land Acquisition Act and the plaintiff failed to put in objections under s 9 or to show any sufficient reason for not filing such objections *held* that the Judge on the case coming before him ought not to have interfered with the award of the Collector 12 A L J, 1319 Sub-section (2) of the Act requires that a person interested in the land sought to be acquired should make objection at a time which shall not be earlier than 15 days after the publication of the notice, and clause (3) requires a second notice to be served on the occupier of the land which is to be of the same effect as the notice prescribed by cl (2) 15 A L J 450=39 A 394=40 Ind Cas 76 Strict observance of s 9 as to service of notice is necessary before final provisions of s 25 can be enforced A I R 1930 Cal 471=34 C W N 323=127 Ind Cas 666, 128 Ind Cas 147=A I R 1930 Mad 836 The phrase 'not earlier than 15 days' means that the claimant is to have 15 days' clear notice before he need appear *i e* before the date of the enquiry 59 M L J 911=129 Ind Cas 251=A I R 1931 Mad 50, 57 C 837 On general principles a notice, which is addressed to all the joint claimants and served on some of them, should be regarded as good service as against the persons not personally served. A I R 1934 Cal 525=38 C W N 239=61 C 245=151 Ind Cas 160 Section 9 does not require 15 clear days' notice 137 Ind Cas 116=12 P T 659=A I R 1932 Pat 134 Where some notice was received and money was obtained, such person must prove that notice under s 9 was not received, A I R 1933 Nag 321 Section 9 does not require claimant to specify amount of compensation claimed in respect of each sub head of s 23 A I R. 1933 Sind 21=27 S. L. R 84

* Act XIV of 1866

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co proprietor, sub proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement

Power to require and enforce the making of statements as to names and interests

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code *

Notes —Until the Civil Courts have finally disposed of a land acquisition case no prosecution could be instituted for giving false information when called upon to furnish information under s 9 of the Act 27 C 985=5 C W N 131

Enquiry into Measurements, Value and Claims, and Award by the Collector

11 On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9, to the measurements made under section 8 and into the value of the land "at the date of the publication of the notification under section 4, sub-section (1)"† and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

Enquiry and award by Collector

(*i*) the true area of the land ,

(*ii*) the compensation which, in his opinion, should be allowed for the land , and

(*iii*) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims, he has information, whether or not they have respectively appeared before him

Notes —Person claiming compensation must prove title affirmatively A I R 1931 P C I=56 I A 339=130 Ind Cas 616=1931 A L J 249=53 C L I 1=60 M L J 142 The duty of a Collector under s 11 of the Act is to make an award in regard to three matters, *viz*, (1) the area of the land included in the award, (2) the total compensation to be allowed for that land, and (3) the apportionment of that compensation among all the persons interested in that land The Act does not contemplate that where more than one person is interested in a parcel of land there should be more than one award relating thereto 59 I A 155=54 A 286=62 M L J 682=55 C L J 318=136 Ind Cas 449=36 C W. N 579=A I R 1932 P C 212 (P C) The Land Acquisition Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is [illegible] ch interest in the land as [illegible] M L T 272 ; see also, [illegible] 11 to 15 of the Act are [illegible] ointed to take order [illegible] acceptance of their [illegible] award by a Collector under this section about the question of appointment, is final except under certain conditions provided by s 12 only as between the Collector on the one hand and the body of claimants on the other, and not as between the claimants *inter se* 7 C W. N 538 The Collector, when he holds an enquiry and makes an award under this section is not a Court [illegible] C L J 505 ; see also 30 C. [illegible] npetent to the Government [illegible] R 592 Award under s. [illegible] s 26 A. I R 1933 Rang [illegible] proceeding 137 Ind Cas.

* Act XIV of 1860

† The words within quotations have been inserted by Act 38 of 1923

116=12 P L T 659=A I R 1932 Pat 134 Collector is not limited to evidence taken before claimant 137 Ind Cas 116=12 P L T 659=A I R 1932 Pat 134 Where main principles on which lands are valued are correct, High Court should not disturb conclusions of lower Court merely because there is difference of opinion as to details A I R 1932 Pat 134=12 P L T 659=137 Ind Cas 116 Statement by Land Acquisition Officer as to fair compensation and how it should be apportioned is sufficient 27 S L R 84=A I R 1933 Sind 21

Award of Collector when to be final

12 (1) Such award shall be filed in the Collector's office, and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively ap peared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives, when the award is made

Notes—The only remedy of the claimant who had notice of the award under s 12 (2) and feels himself aggrieved thereby is to apply to the Collector under s 18 of the Act 37 M L J 618=26 M L T 268=53 Ind Cas 646, see also 29 C L J 53=48 Ind Cas 702 Onus of proving inadequacy of award is on person who claims enhanced compensation 35 Bom L R 763=A I R 1933 Bom 361

Adjournment of enquiry

13 The Collector may, for any cause he thinks fit, from time to time, adjourn the enquiry to a day to be fixed by him

Power to summon and enforce attendance of witnesses and production of documents

14 For the purpose of enquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses including the parties interested or any of them and to compel the production of documents by the same means, and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure *

Notes—Although he has the power of summoning witnesses in the same manner as is provided in the case of a Civil Court there is no provision that any person making a false statement before him would make himself liable for giving false testimony 30 C 84

Matters to be considered and neglected

15 In determining the amount of compensation the Collector shall be guided by the provisions contained in sections 23 and 24

Notes—The Collector is to be guided by the provisions of section 23 in determining the amount of compensation 10 Bom L R 996 In computing the amount [illegible] r the statutory powers, the [illegible] vner is entitled to have the [illegible] give him the best return and [illegible] sposition. 32 P L R 321= [illegible] most lucrative way of utilizing site 135 [illegible] 1931 Lah 361 Due allowance must be [illegible] iven dispossessed owner best return 135 [illegible] 1931 Lah 361 Differentiation can be [illegible] be fixed between value of former and [illegible] land

Taking Possession

Power to take possession.

16 When the Collector has made an award under section 11, he may take possession of the land which shall thereupon vest absolutely in the Government, free from all encumbrances

* XIV of 1882

Notes —A mortgagee has lien to the compensation money where after declaration made by Government for the acquisition of property the owner executed a mortgage 13 C W N 350 = 1 Ind Cas 164, see also 13 C W N 357 = 1 Ind Cas 45 Where the compensation money granted to a person under the Land Acquisition Act, was recovered by the Government on its finding that it was not necessary to acquire the land, it cannot be held that the title to the land continued to vest in the Government 17 M L J 557, 12 M 105, 20 M 279 Under this section the making of an award and taking possession of the land by the Collector vest the property absolutely in the Government and the mere fact that notice had not been served on the occupier of the land in accordance with ss 9 (3) and 45 does not render the award, or subsequent proceedings void nor does it prevent the vesting of property in the Government 37 M L J 618 = 53 Ind Cas 646, see also 30C 570; 37 C W N 522

Special powers in cases of urgency

17. (1) In cases of urgency, whenever the Local Government so directs the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub section (1), take possession of any waste or arable land needed for public purposes or for a Company Such land shall thereupon vest absolutely in the Government, free from all encumbrances

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic, or for the purpose of making thereon a river side or ghat station, or of providing convenient connection with or access to any such station, the Collector may immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Local Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience

(3) In every case under either of the preceding sub sections, the Collector shall, at the time of taking possession, offer to the persons interested compensation for the standing crops and trees (if any) on such land, and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24, and, in case such offer is not accepted the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained

"(4) In the case of any land to which in the opinion of the Local Government the provisions of sub section (1) or sub section (2) are applicable the Local Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub section (1)"*

PART III

REFERENCE TO COURT AND PROCEDURE THEREON

Reference to Court

18 (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measure

* The words within quotations have been added by Act 38 of 1923

ment of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested

(2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award,

(b) in other cases—within six weeks of the receipt of the notice from the Collector under section 12 sub section (2) or within six months from the date of the Collector's award, whichever period shall first expire

Notes—The Collector's authority to make the reference as an agent of G
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immediate or not 7 Bom L R 697=30 B 275
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signing
within s
must do ... and *ibid* Person
140 Ind Cas 385=36
permanent interest as
entitled to compen-
... abatement of rent, burden of proof is on
... C W N 866=140 Ind Cas 385=A I R 1933 Cal 21 Value of expert opinion is not great A I R ... =143 Ind Cas 699 Burden to prove valuat ... 1933 Sind 124=143 Ind Cas
699 Land ... reference even if application,
in his opini ... Cas 68=A I R 1932 Oudh
180 Refer ... include question as to total amount of compensation or dispute as to person to whom it is to be paid But inquiry as to negligence or error in payment made by Collector cannot be gone into 11 Rang 344=A I R 1933 Rang 176 The Calcutta Improvement Tribunal
under s 18, Land Acquisition A
apportionm
diction
jurisdi ... has no
especi ... before the tribunal This is
of the ... seek the Tribunal as the forum for the determination of the question of valuation and apportionment A I R 1934 Cal 887=60 C 1096 Where a case is referred to the District Judge on objections being raised to the award of the land acquisition officer, and the case on appeal to the High Court by some of the objectors is again remanded to the District Court, an objector who has not taken part in the proceedings before the District Judge and those who have not appealed from orders of District Judge, are not entitled to intervene as objectors on remand A I R 1933 Lah 948 Where possession and control of compensation money is with Court, *ad valorem* Court fees need not be paid on appeal for recovery

of that sum A I R 1932 Mad 438=62 M L J 541=55 Mad 641=1932 M W N 420 Party aggrieved by order of apportionment of compensation can make an application under s 18 147 Ind Cas 877 After the Collector has declared his award, the burden is upon the objectors, who go to the District Court to show that the award is erroneous But after the District Judge has increased the rate, it is for the appellant to show that the decision of the District Judge was erroneous A I R 1934 Lah 97 The rules framed by the Board of Revenue for the assessment of the value of the interests of the tenant and the landlord in lands held and used

he Civil Courts and where they are

ıust give way A I R 1934 All 239

made by a Collector, in the course

ect to the right of a party to ask for a reference under this section 37 P R 1907=35 P L R 1905 When a Collector is acting under s 18 of the Act he is not a Court within the meaning of s 115 C P Code Hence where he refuses to make an order of reference, no revision to High Court is competent. A I R 1934 Rang

1049; but see 38 C W N 844=60 C L J 184

Cas 68=7 Luck 578=A I R 1932 Oudh 180,

Collector has no power to review his order

essential element to be taken into

compulsorily acquired is the fact

12 C L J 489 Where the value of a land is the result of various factors working in different ways and degrees they cannot be apprehended and estimated a right off hand 32 C 343 Unregistered sales of land in the vicinity cannot be considered 11 Ind Cas 918 A Collector s award is complete as soon as he apportions the amount of compensation among the respective claimants 14 Ind Cas 537=203 P W R 1912=232 P L R 1912 This section does not apply to the determination of the question as to the succession of deceased claimant s investment of the money 13 Ind Cas 550=237 P W R 1912 Once a reference is made under this section the question as to how the compensation is calculated is necessarily re opened, so that the Court may determine whether the claimant is entitled to more than what has been given to him 22 M L J 379=11 M L T 327=14 Ind Cas 270 The landlord is entitled no doubt, to capitalisation of as much rent as may be found to be payable in respect of the proportion of the holding is acquired together with 15 per cent for the compulsory acquisition and some thing more in respect of the possibility of the enhancement of the value of the land hereafter 17 C W N 100=40 C 64 The mere fact that the compensation money awarded under the Act has been paid out to a party does not oust the jurisdiction of the Civil Court to entertain a reference duly made under this section 17 C W M 1057 In a land acquisition case no question for which the objector has not asked the Collector to make a reference under this section can be raised 24 Ind Cas 903=81 P W R 1914=180 P L R 1914 The procedure prescribed by ss 18

be strictly observed 6

ceedings under the L

Acquisition Judge are

N 348=20 M L T

213; 49 Ind Cas 659=42 M 231 When a party to a reference under the Land Acquisition Act does not press his c

the Special Land Acquisition Judge,

Court and re open the question 32

which requires a claimant to state the

a reference under s 18 he claims a larger sum than that awarded by the Collector 24 C W N 716=58 Ind Cas 631 A question of title arising between the Government and another claimant cannot be settled by the District Judge in a reference under s 18 24 O C 197=8 O L J 746 Court has jurisdiction only to deal with matters covered by reference Objection to measurement of land cannot be heard

A I R 1930 Rang 346=8 Rang 364=

2 577=57 I A 100=A I R 1930

out every objection he has and

Len 127 Ind Cas 733=A I R.

ourt fee payable for application

B)=1932 A L J 769=141 Ind

Cas 587

Collector's statement to the Court

19. (1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand,—

(*a*) the situation and extent of the land, with particulars of any trees, buildings, or standing crops thereon

(*b*) the names of the persons whom he has reason to think interested in such land,

(*c*) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and amount of compensation awarded under section 11, and

(*d*) if the objection be to the amount of the compensation the grounds on which the compensation was determined

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested, respectively

Notes —Where a reference is made the proceedings in the Court are intended to constitute a separate inquiry and they must terminate with a specific award L B R (1903 4) Vol II 208 Where the Collector and the Civil Judge are one and the same person the disposal at Civil Judge of a reference made by him as Collector under s 19 is not valid in law 11 C P L R 25 A Collector in making a reference to the Civil Court should state the grounds on which the amount of compensation was determined 6 C W N 406 11 C W N 875

Service of notice

20 The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection ~ directing their appearance before the Court on that day to be served on the following persons, namely :—

(*a*) the applicant,

(*b*) all persons interested in [illegible] objection except such (if any) of them as have consented without protest to receive payment of the compensation awarded, and

(*c*) if the objection is in regard to the area of the land or to the amount of the compensation the Collector

Notes—The Special Judge must decide accord[illegible] 34 C 606 The Court would be slow to diffe[illegible] matter of a few rupees except for very stror[illegible] section (c) the Secre ary of State is only intere[illegible] which the Collector or the Court on reference by [illegible] Notice to Collector is not necessary except in c[illegible] 1933 Rang 176=11 Rang 344

Restriction on scope of proceedings

21 The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection

Notes —The enquiry must be limited to objections of parties 34C 451 ; see also 38 C 230 ; 12 C W N 98, 12 C W N 987, 12 C W N 985 ; 13 C L J 159 Ordinary value of land as a whole should first be found out and then while apportioning it, if necessary, question as to conflicting interests of claimants may be dealt with 135 Ind Cas 438=58 C 1345=A I R 1932 Cal 143

Proceedings to be in open Court

22 Every such proceeding shall take place in open Court and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding

Matters to be [illegible] determining com[illegible]

23 (1) In deter[illegible] and [illegible] consideration— [illegible] shall take

first, the market value of the land at the date of the publication of the "notification under section 4 subsection (1) *

secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector s taking possession thereof ,

thirdly, the damage (if any) subtained by the person interested at the time of the Collector s taking possession of the land, by reason of severing such land from his other land ,

'erested at the time
of th n of the acquisition
injuri vable in any other
mann
by the Collector
the person interested is compelled to change his residence or place of business, hange , and
from diminution of the
profit. the declaration under
section 6 and the t me of the Collector s taking possession of the land

(2) In addition to the market value of the land as above provided, the Court shall in every case, award a sum of fifteen percentum on such market value, in consideration of the compulsory nature of the acquisition

Scope—Ss 23 and 24 only lay down rules for determining the market value and do not create any right on the part of the owners of the lands to obtain compensation on the footing of their respective rights 37 C W N 14

Clause 1—By sub section (1), in determining the amount of compensation to be awarded for the land the Court shall take into consideration first the market value of the land to which may be added various other sums for damages and expenses under headings 'secondly' to sixthly in that sub section When there are no claims for compensation under these heads the compensation payable is the market value of the land 10 Bom L R 996 The market value of land may be rougl ly des cribe it reasonably expec for the sale and p 301=23 O C 89 , but must be entirely conjectural A I R 1931 S nd 52=131 Ind Cas 22 Amount of compensation is the market value at the date of the publication of the notification A I R 1929 All 525=1929 A L J 522=51A 765=117 Ind Cas 612, 131 Ind Cas 222=A I R 1931 Sind 52 In estimating the market value of such land the Court ought to take into consideration the prices paid for building land and sites for houses in the vicinity in recent years 11 P 485=13 P L T 46=137 Ind Cas 226=A I R 1932 P 120=A L R 1932 P 261, 34 Bom L R 1457=A I R 1933 Bom 37=A L R 1932 B 1133—141 Ind Cas 352, 55 C L J 558=A I R 1932 Cal 312 This value depends on general pre existing considerations apart from the individual projects of a particular purchaser 10 Bom L R 912 The measure of compensation is not what the person who takes will gain by taking it but what the person, from whom it is taken will lose by having it taken from him 13 C W N 1046 By market value is meant the price which would be obtainable in the market for the concrete parcel of land with its peculiar advantages and its peculiar disadvantages 33 B 29 48 B 190 As regards determining market values 24 Ind Cas 141=27 M L J 106 1922 Lah 327, 44 M L J 132, 1923 Mad 1, 33 A 733 12 Ind Cas 202, 18 C W N 884 34 C L J 188, 18 C W N 531, 24 Bom L R 782, 23 Ind Cas 542, 16 Bom L R 55 (P C) Exact valuation is practically impossible and the approximate market value is all that can be arrived at 11 C W N 876, 56 C 986, A I R 1930 Cal 230=121 Ind. Cas 737 The Court should rely more on sales than on expert opinion 10 Bom L R 682 *Bona fide* offers have to be taken into account in fixing value A I R 1928 Rang 65=109 Ind Cas 11 Where tenants and landlords have separate interest over land which is to be acquired, it is not the separate interest which has to be valued but primarily the land A I R 1934 Pat 168=13 Pat 221=150 Ind Cas 27, 55 C L J

* The words within quotations have been substituted by Act 38 of 1923

558=A I R 1933 Cal 312 In fixing market value of land in suit, Land Acquisition officer should look to sales of land in adjoining locality which is of similar quality with similar advantage A I R 1931 Sind 56=137 Ind Cas 715 Market value is to be considered at date of publication of notification 25 S L R, 285=A I R 1931 Sind 52=131 Ind Cas 222, 26 S L R 321. Market value should be determined with reference to future utility, but it must not be entirely conjectural A I R 1931 Sind 52=25 S L R 285=131 Ind Cas 222; See also A I R 1931 Sind 67=26 S L R 321 In case of ordinary agricultural land 20 years' purchase should be allowed 25 S L R 304=A I R 1931 Sind 168=134 Ind Cas 1002 Value means market value A I R 1933 Sind 57=145 Ind Cas 795 Land which has been assessed as a garden cannot also be assessed as an agricultural land A I R 1933 Lah 946 In determination of market value, post notification sale sales should not be ignored altogether 35 Bom L R 763=A I R 1933 Bom 361 Court should take broad view based on evidence and favourable to owner in estimating value 35 Bom L R 763=A I R 1933 Bom 361 Receipt of rent may be basis of compensation A I R 1933 Bom 37=34 Bom L R 1457=141 Ind Cas 352 Valuation of plot close by is no basis of valuation of land far apart 55 C L J 558=143 Ind Cas 317=A I R 1933 Cal 312 Where demands for buildings is limited, land should be valued on basis of agricultural land A I R 1933 Lah 508 Sections 23 and 24 only lay down rules for determining the market value and do not create any right on the part of the owners of the lands or the holders of interest therein to obtain compensation on the footing of their respective rights as at the date of the declaration A I R 1933 Cal 522=60 C 281=37 C W N [illegible]
of compensation between lanc [illegible]
in land acquired should be tak [illegible]
132 Ind Cas 698=A I R 193 [illegible]
bable use which would have given dispossessed owner best return 33 P L R 1100=135 Ind Cas 183=A I R 1931 Lah 364, see also 12 L L J 280=12 Lah 117=32 P L R 321=A I R 1931 Lah 207 Value paid to owner is value as it exits at date of taking A I R 1933 Mad 190 Rate of capitalization depends on particular circumstances 25 S L R 285=A I R 1931 Sind 52 Section 9 does not require claimant to specify amount of compensation claimed in respect of each head of s 23 27 S L R 84=A I R 1933 Sind 21 Reliable estimation is rarely obtained by adding cost of building to value of bare site A I R 1933 Sind 57=145 Ind Cas 795 Where price of property paid in boom was followed by fall reasonable deductions in [illegible]
A I R 1933 Sind 57 [illegible]
for plots piecemeal at date [illegible]
155=146 Cas Ind 77

Recognised method of valuation—Where there is evidence available of sales of similar property *in the neighbourhood* it is to be preferred 2 C 103, 11 C W N 875 The income of the *property* can be taken into consideration in determining valuation 34 B 486, 10 *Bom L R 920* Every case must depend on its own circumstances on the evidence given and the nature of the property 11 B L R 236 The *loss of earnings owing* to the acquisition of a favourable locality, is to be calculated on the basis of what would be the earnings if the trade or occupation were pursued at the particular locality, and the Judge should *not take* [illegible] ay accrue from the new habitation—14 Ind [illegible] ard of compensation can be made on specula- [illegible] future development of the land 15 Ind Cas [illegible] L J 106. As regards methods of valuation [illegible] l area, *vide* 14 Ind Cas 163 The *words* [illegible] taking possession" include not only damage [illegible] time but also that which can reasonably be [illegible] d Cas 202 In assessing *compensation* for [illegible] nent for quarrying purposes, its special [illegible] into *consideration* 15 Bom L R 845= [illegible] 44 I... Cas 3 It is reasonable in seeking to fix the proportionate value between the back land and the frontage land to consider how far the land stands back from the road 18 C L J 244 In assessing the [illegible] compensation *for* the [illegible]

measured by capitalizing the present rent at 30 years' purchase 18 C W N 533=
uit for a number of years *e g*
nual rental 25 Ind Cas 393
to be compensated for injury
than counter balanced by the

to the owner at the time of taking and (2) the value to the owner is to be measured by all the advantages which the land possesses at the time of taking 58 C L J 38 As regards valuation of back and front land, *vide* 58 C 921 = A I R 1933 C 25

Clause (4)—*Vide*, 25 C 354, 34C 470, 13 C W N 1060, 6 C W N 406, 25 C W N 677, 38 C W N 239=61 C 245

Clause (5)—*Vide Rickets* v *Metropolitan Railway*, 35 L J Q B 261

Clause (6)—9 Bom L R 112

Sub section(2)—Fifteen per centum of compulsory acquisition are to be added only to the market value of the land and not to the part of the compensation which may be payable on the other heads 10 Bom L R 994, see also 30 M 153

Matters to be neglected in determining compensation

24 But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition,

secondly, any disinclination of the person interested to part with the land acquired,

thirdly, any damage sustained by him which, if caused by a private person would not render such person liable to a suit,

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6 by or in consequence of the use to which it will be put,

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put or

seventhly, any outlay or improvements on or disposal of the land acquired commenced made, or effected without the sanction of the Collector after the date of the publication of the 'notification under section 4, sub section (1)'*

Notes—A person is entitled to compensation under sub section (4) of s 23 of the Act in respect of a Railway Company having made the 'level crossing' across his private road giving access of l
or loss for it by reason of his oth
W N 406 The purposes for
award of compensation 19 P W
land adjacent to owner's market acquired for opening new market prospective loss due to new market not to be considered A I R 1927 All 246=25 A L J 177=49 A 353=100 Ind Cas 749

Rules as to amount of compensation

25 (1) *When the applicant has made a claim to compensation pursuant* to any notice given under section 9 the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the judge) to make such claims, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector

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* The words within quotations have been substituted by Act 38 of 1923

(3) When the applicant has . . . . . . llowed by the Judge), to make such . . . shall not be less than, and may exceed, the amount awarueu uy the C

Notes—Where claim is delayed but put in s 25 (1) applies 143 Ind Cas 699= A I R 1933 Sind 124 Where no claim pursuant to a notice under section 9 is made by a party interested to make a claim, the Land Acquisition Judge under sub-section (2) has no power to make an award for an amount exceeding that awarded by the Collector unless the claimant satisfies him that he has sufficient reason for refraining from making his claim in due time 12 C W N 263 By section 25 the award is to state the . . . and by section 54 an appeal lies against any part of the award 31 . . . or agreed to accept the Collector's award he must . . . within the period mentioned in this section 1 (. . . made within the meaning of this section 12 C W N 263, 33 A 376 The words 'less than the amount awarded mean "less than the total sum allowed" by the Collector 22 M L J 379 Sub section (1) lays down that the amount awarded shall not exceed . . . Ind Cas 202 What is meant by 'less than the amount, . . . , obviously the total amount and not what is . . . to which the entire amount is arrived at . . . mere fact that there were certain private negotiations for sale of the land between the Government and the plaintiff in which the Government had offered more than what the Collector allowed was not sufficient reason, within the meaning of s 25 (2), for failing to make a claim under s 9 17 A L J 1319 The original cost of construction of a building can be taken into consideration in ascertaining the market value thereof 44 Ind Cas 883= 76 P W R 1918, 34 B 486=9 Bom L R 99 Award of 15 per cent for market value for compulsory acquisition is imperative and is not dependent on specific previous claim A I R 1933 All 742=145 Ind Cas 526 Where there is no place in compound for building latrine, owner can insist on whole house being acquired 138 Ind Cas 426=1931 M W N 1266=55 M 391=63 M L J 962=A I. R. 1932 Mad 55 Judge has discretion to raise question of *damages for severance* *Ibid* Where land is acquired by Government under this Act, Zamindar cannot claim compensation for Kankor 133 Ind Cas 611=1931 A L J 660=53 A 658= A I R 1931 All 394 Land Acquisition Judge is not competent to award amount in excess of claim 61 C 245=38 C W N 239=A I R 1834 Cal 525 s 25(2) is bar to further enhancement 12 P L T 659=A I R 1932 Pat 134

26 (1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub section, together with the grounds of awarding each of the said amounts

Form of awards

"(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively of the Code of Civil Procedure, 1908"*

Notes—Statement by Land Acquisition Officer as to fair compensation for whole land and how it should be appointed is sufficient 27 S L R 81=A. I R 1933 Sind 21

27 (1) Every such award shall also state the amount of cost incurred in the proceedings under this part, and by what persons and in what proportions, they are to be paid

Costs

(2) When the award of the Collector is not upheld the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs

* The words within quations have been added by Act 19 of 1921.

Notes —When the Collector awarded compensation at Rs 26 per cent and the awarded compensation at Rs 28, is cost from the Collector 1932 roceedings in the Court of first in the discretion of those Courts 33 Bom L R 1210=A I R 1931 Bom 528 Once proper reference is made to District judge, his final order on it is an award 129 Ind Cas 681=1931 M W N 466=32 M L W 893=A I R 1931 Mad 26=59 M L J. 682

28 If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court

Collector may be directed to pay interest on excess compensation

Notes —Under this section, the claimants are entitled to interest at 6 per cent per annum on the difference between the award and the Collector's offer 7 M L T 78=5 Ind Cas 744 Interest on excess is payab e from taking possession by Collector to payment of excess 84 Ind Cas 371 , but see 97 Ind Cas 933 Under this section interest can only be granted from the date when the Collector takes possession of the land acquired and not from the date of the award 95 Ind Cas 883 Court has discretion to decree interest if compensation awarded is more than that of Collector 133 Ind Cas 611=1931 A L J 660=53A 658=A I R 1931 All 394 Where excess amount is awarded by District Judge interest on it from date of possession to date of payment can be claimed 27 S L R 84=A I R 1933 Sind 21

PART IV.

APPORTIONMENTS OF COMPENSATION

29 Where there are several persons interested if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and, as between such persons the award shall be conclusive evidence of the correctness of the apportionment

Particulars of apportionment to be specified

Notes —The land Acquisition Act does not contemplate any decision by the made by the Collector 7 Ind Cas 10 Where ownership of the building thereon vests in the the compensation money, Courts will have to be guided by the state of things which existed prior to the acquisition A I R 1927 (P C) 135=54C 669=54 I A 218=29 Bom L R 1143=46 C L J 1=31 C W N 965=53 M L J 158=26 A L J 1 (P C)

30 When the amount of compensation has been settled under section 11 if any dispute arises to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court

Dispute as to apportionment

Notes —When the compensation payable for the land is fixed the Collector has to apportion it amongst the persons interested 10 Bom L R. 994 , 12 Bom L R 34 , 3 Ind Cas 480 To establish a claim to a piece of land acquired under this section, the claimant must show that he has title or having no title deeds, must show effective occupation 6 M L T 139=2 Ind Cas 931 The Court ought to proceed on the principle of ascertaining what is the value of the interest of the zamindar on the one hand with which he has parted and that of the tenant on the other, and to apportion the compensation money between them according to those values 30C 810 Where an occupancy holding is acquired under the Act and a certain sum is awarded as compensation therefor, the compensati should be apportioned between the landlord and the occupancy tenant in accorda with the values of their respective interest in the holding 13 Ind Cas 420 claim disposed of by the Collector in the course of Land Acquisition proceed

under the special procedure prescribed by Act I of 1894, the Collector's order or adjudication of the rights of the owners or claimants to the property for which compensation was assessed and awarded, cannot be questioned otherwise than by a reference to Court under the provisions of the Act and the Civil Courts are no competent to re open and determine matters disposed of in accordance with the Act in a separate suit 16 P W R 1913=17 Ind Cas 684=52 P R 1913. Though the section clearly contemplates that when there is dispute as to appor tionment the reference to the Civil Court under this section should be made before any payment has been made still there is nothing in the Act that prohibits the Land Acquisition Collector from making the reference after payment of compensation to one of the parties 20 C W N 816 Decision on reference under s 30 is not an award but a decree and is appealable as such A I R 1929 Mad 351=56 M L J 357=52 M 147=29 M L W 343=119 Ind Cas 42, 115 Ind Cas 3455=6 M L J 387=A I R 1929 Mad 723, 26 C W N 713=42 M 370 P C In appeal from decision in reference under s 30 Court fee is to be charged under Act 1 Sch I Court fees Act A I R 1929 Mad 223=29 M L W 237=56 M L J 387=1929 M W N 62=115 Ind Cas 345 Where no objection as to award of apport onment was ever taken, apportionment cannot be shaken 136 Ind Cas 449=55 C L J 318=36 C W N 579=62 M L J 682=34 Bom L R 885=1932 A L J 741=59 I A 155=A I R 1932 P C 102 (P C) Where land is leased in perpetuity, Court in apportioning compensation awarded should determine respective interests of lessor and lessee and apportion compensation according to interests A I R 1932 Lah 123=32 P L R 864=136 Ind Cas 10 Where compensation was awarded to *Kheraji brahmottordars* for acquisition, and minerals were not acquired, and no abatement of rent claimed, zamindar is not entitled to participate in compensation 37 C W N 702=A I R 1933 Cal 767 Order of apportionment is appealable though not as award but as decree A I R 1933 Bom 187=57 B 314=35 Bom L R 276=144 Ind Cas 710

PART V

PAYMENT.

Payment of compensation or deposit of same in Court

31 (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub section

(2) If they shall not consent to receive it or if there be no person compe tent to alienate the land, or if there be any dispute as to the title to receive the compensation, or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under [illegible] by application under section 18

Provided [illegible] shall affect the liability of any person, who [illegible] of any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Local Government instead of [illegible] arding a money compen sation in [illegible] with a person having [illegible] other lands in exchange, [illegible] the same title, or in [illegible] be equitable having regard to the interests of the parties concerned

(4) Nothing in the last foregoing sub section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof

upon the Collector to pay the n named therein 22 B 805 reference he cannot ask for an 10 C W N 991 Under this section it is clearly the duty of Government to deposit in Court the whole of the compensation money which they may be required to deposit by the Act free from any deduction and when a demand is made by Court officials under the Court Rules for poundage and fees in respect of such deposit Government have to pay such poundage and fees in adition to the compensation money 14 Bom L R 507 sub section (2) portion of the compensation is entitled to maintain a civil portionment of the compen- 83 P R 1919=18 P W R 1919=49 Ind Cas 657 see also 1920 Pat 129=1 P L T 143=56 Ind Cas 125 at apportionment, must apply under s 18 if proviso (3) Civil suit also in such a case also A I R 1933 Oudh 100=8 Luck 295=9 O W N 1176=141 Ind Cas 674 Where compensation amount has already been paid by Collector, Court cannot direct Collector to pay again to some one else 11 Rang 344=A I R 1933 Rang 176 Where receiver has power to alienate land, s 32 does not apply 139 Ind Cas 180=36 C W N 370—A I R 1932 Cal 660

Investment of money deposited in respect of lands belonging to persons incompetent to alienate

32 (1) If any money shall be deposited in Court under sub section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(*a*) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held or

(*b*) if such purchase cannot be effected forthwith then in such Government or other approved securities as the Court shall think fit,

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would from the time being have been entitled to the possession of the said land and such moneys shall remain so deposited and invested until the same be applied—

(*i*) in the purchase of such other lands as aforesaid, or

(*ii*) in payment to any person or persons becoming absolutely entitled thereto

(2) In all cases of r shall order the costs charges and expenses inc

(*a*) the costs of such investments as aforesaid,

(*b*) the costs of the orders for the payment of the interest or other proceeds, of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants

deposited in Court 10 Bom L R 657 The Court may under cl (1) of sub section (1) sanction the application of the compensation money to effect repairs and improvements upon the remainder of the trust property 13 C L J 597 A service *inam* unless enfranchised is land which the owner is incompetent to alienate within the meaning of ss 31(2) and 32(1) 25 Ind Cas 600 The provisions of this section do not apply to the compulsory acquisition of land which forms part of an unrecognised sub division of a *narva* holding 17 Bom. L R. 1140 This section as amended by the Calcutta Improvement Act provides that the tribunal shall order the

held under like conditions words of s 32 include trustees are entitled to get espect of properties of a d to take p ssession of its invested in Government e *Thakur* acquired under the Act In such a case the money ought not to be directed to be invested in purchase of other lands but ought to be made over to the receiver under s 32 (b) (ii) —36 C W N 370=A I R 1932 Cal 660 President of Tribunal can direct re investment of compensation money in purchase of land He can also inquire as to suitability of properties to be purchased 36 C W N 848=140 Ind Cas 866=59 C 1272=A. I R 1932 Cal 844, see also 60 C L J 227, 60 L L J 88 But president must exercise his functions in judicial manner, 140 Ind Cas 866=59C 1272=36 C W N 848=A I R 1932 Cal 844 Where possession and control of compensation money is lying with Court *ad valorem* Court fees need not be paid on appeal for recovery of that sum 55M 641=A I R 1932 Mad 438

Investment of money deposited in other cases

33 When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be

Notes—This section provides for investment of compensation money deposited by the Collector in Court in cases where he is prevented from paying it away for any other reason mentioned in s 31 (2) which is not provided for by section 32. The moneys are to be invested in Government securities or similar stock *Donough* P. 167.

Payment of interest

34 When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 6 per centum per annum from the time of so taking possession until it shall have been so paid or deposited

Notes—This includes compensation plus statutory allowance together with interest on the whole amount 22 B 805 Interest on compensation amount from date of taking possession should be awarded A I R 1928 P C 287=28 M L W 753=111 Ind Cas 261

PART VI.

Temporary Occupation of Land

Temporary occupation of waste or arable land Procedure when difference as to compensation exists

35 (1) Subject to the provisions of Part VII, of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid ... materials (if any) to be taken ... in a gross sum of m... be agreed upon in writ...

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court

Notes —This sect on is confined to temporary acqu sit on of waste or arable land In such cases the compensat on is to be settled by agreement But in case of difference the Collector is to refer the matter to Court

Power to enter and take possession and compensation on restoration

36 (1) On payment of such compensation or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land and use or permit the use there of in accordance with the terms of the said notice

(2) On the expirat on of the term the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement and shall restore the land to the per ons interested therein

Provided that if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company

Notes —In the first instance the Collector need not make an award under sect on 11 On pay nent of such compensation or on executing such an agreement or on making a reference under section 35 the Collector is ent tled to enter and take possession of the land

Difference as to condition of land

37 In case the Collector and persons interested differ as to the condition of the land at the expiration of the term or as to any matter connected with the said agreement the Collector shall refer such difference to the decision of the Court

Notes —This section provides for a further refere ice to the Court in the event of a d spute as to the condition of the land at the exp rat on of the tenancy or as to any quest on arising out of the agreement—*Donough s Land Acquisition*

PART VII

Acquisition of Land for Companies

Company may be author zed to enter and survey

38 (1)* The Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4

(2) In every such case section 4 shall be construed as if for the words 'for such purpose the words for the purposes of the Company were substituted and section 5 shall be construed as if after the words the officer the words 'of the Company were inserted

Industrial concern to be deemed company for certain purposes

† '38 A An industrial concern ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company desiring to acquire land for the erec tion of dwelling houses for workmen employed by the concern or for the provision of amentities directly connected therewith shall so far as concerns the acquisition of such land be deemed to be a com pany for the purposes of this part and the references to company in sections 5A 6 7 17 and 50 shall be interpreted as references also to such concern

* Certain words before this repealed by Act 38 of 1920 have been omitted
† Inserted by Act 16 of 1933

39 The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government nor unless the Company shall have executed the agreement hereinafter mentioned

Previous consent of Local Government and execution of agreement necessary

Notes—The consent of the Local Government mentioned in this section need not be express or formulated in specific terms 30 C 36=7 C W N 349

40 (1) Such consent shall not be given unless the Local Government be satisfied, "either on the report of the Collector under section 5A, sub-section (2) or"* by an enquiry held as hereinafter provided,—

Previous enquiry

"(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith or (b) that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public"†

(2) Such enquiry shall be held by such officer and at such time and place, as the Local Government shall appoint

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible in the same manner as is provided by the Code of Civil Procedure‡ in the case of a Civil Court

Notes—This section constitutes the Government, as the custodian of public interest, the sole judge of the two points mentioned therein 30 C 36=7 C W N 249 The Land Acquisition Court has no jurisdiction to consider the legality of the acquisition 99 Ind Cas 530

41§ If the Local Government is satisfied "after considering the report if any, of the Collector under section 5A sub-section (2) or on the report of the officer making an enquiry under section 40,"* that "the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith or that † the proposed [illegible]

Agreement with Secretary of State in Council

[illegible] satisfaction of the Local Government, for the following matters, namely —

(1) the payment to Government of the cost of acquisition ,

(2) the transfer, on such payment, of the land to the Company ,

(3) the terms on which the land shall be held by the Company ,

"(4) where the acquisition is for the purpose of erecting dwelling houses or the provisions of amenities thus connected therewith, the time within which the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided , and

(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work †

Notes—This section makes the Government the sole judge of the manner in which the public are to have the use of the land taken up 30 C 36=7 C W N 249

* The words within quotations have been added by Act 38 of 1920
† Substituted by Act 16 of 1933 ‡ XIV of 1882
§ Certain words repealed by Act 38 of 1920 have been omitted

42 Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India*, and also in the local official Gazette and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same affect as if it had formed part of this Act

Publication of agreement

Notes —The publication is for the purpose of given notice to the public so that they may take advantage of the work of the Company

43 The provisions of sections 39 to 42, both inclusive, shall not apply and the corresponding sections of the Land Acquisition Act 1870* shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such company and the Secretary of State for India in Council, the Government is or was, bound to provide land

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies

Notes —In cases mentioned in this section there is no application of the sections 39 to 42

44 In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreemant as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government

How agreement between Railway Company and Secretary of State may be *proved*

Notes —*Vide* section 37 of the Indian Evidence Act

PART VIII.

Miscellaneous

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed in the case of a notice under section 4, by the officer therein mentioned and, in the case of any other notice by, or by order of the Collector or the judge

Service of notices

(2) Whenever it may be practicable the service of the notice shall be made *on the person therein named*

(3) When such person cannot be found the service may be made on any adult male member of his family residing with him , and if no such adult male member can be found the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court house and also in some conspicuous part of the land to be acquired

Provided that if the Collector or Judge shall direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act 1866† and service of it may be proved by the production of the addressee s receipt

Notes —Under this section service of notice should whenever practicable be made on the person named therein, and under clause (3) of the section if 'such person can not be found' the service is to be made in another way 17 A L J 218=50 Ind Cas 70

46 Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up destroys, damages or displaces any trench or mark made under section 4 shall on convic-

Penalty of obstructing acquisition of land

* Act of 1870 † Act XIV of 1866

tion before a Magis rate, be liable to imp isonment for any term not exceeding one mon h or to fine not exceeding fifty rupees or to both

Notes—The word "wilf lly" sl ows the presence of crim nal i en on

47 If the Collector is opposed or impeded in taking possess on under this Act of any land, he shall if a Magis rate, enforce the surrender of the land to himself, and, if not a Magis rate he shall apply to a Magistrate or (within the towns of Cal u ta Madras and Bombay) to the Commissioner of Police, and such Magis rate or Commissioner (as the ca e may be) shall enforce the surrender of the land to the Collector

Magistrate to enforce sur render

48 (1) Except in the case provided for in section 36 the Government shall be at liberty to withdraw from the acquis tion of any land of which possess on has not been taken

Completion of acqu si ion no compulsory bu compen sat on to be awarded when not completed

(2) Whenever the Government withdraws from any such acquisition the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequen e of the notice or of any p oceedings thereunder and shall pay such amount to the person interes ed, together with all costs reasonably incurred by him in the prosecu ion of the proceedings under this Act relating to the said land

(3) The provisions of Part III of this Act shall apply so far as may be to the determination of the compensation payable under this section

Notes.—The Government in special cases provided in section 36 is at l berty to withdraw from the acqu s ion of any land of wh ch po sess on has not been taken. 30C 36=7 C W N 749. Proceed ngs commenced can be wi hdrawn under this section only by the Government 16 A L J 669=51 Ind. Cas 301

49 (1) The p ovisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building if the owner desire that the whole of such house manufactory or building shall be so acquired

Acqu ition of part of hou e or bu ld ng

Provided that the owner may, at any time before the Coll ctor has made his award under section 11 by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired

Provided also that if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house manu factory or building within the meaning of this section, the Collector shall refer the determination of such ques ion to the Court and shall not take possession of such land until after the question has been determined

In deciding on such a reference the Court shall have regard to the question wh ther the land proposed to be taken is reasonably required for the full and unimpaired use of the house manufactory or building

(2) If, in the case of any claim under section 23 sub-section (1) *thirdly*, by a person interested, on account of the severing of the land to be acquired from his o her land the Local Government is of opinion that the claim is unreasona ble or excessive, it may, at any time before the Collector has made his award order . . . whole of the land of which the land first

. . . e provided for, no fresh declaration or other . . .) both inclus ve, shall be necessary, but the . . . ish a copy of the order of the Local Govern . . . shall thereafter proceed to make his award

Notes.—Th s sect on leaves no option to the Collector 16 C W N 3-8 If land is not necessary adjunct to a house or other bu lding it can no be said to

"form part of a ... see also 27 M 359, 9 O C 311 A W N 1898, 85 ... tor refused to make a reference to the Civil Court ... in the revision set aside his proceedings subse- ... the Collector proceed according to law 16 C L J 165=16 C W N 327 The words "award or any part of the awards" in section 54 of the Act do not include the decision of the Court on a reference under s 49 The decision of the Court on a reference under this section is not appealable 17 Ind Cas 117, see also 15 Bom L R 802=21 Ind Cas 179 Where compulsory acquision of a portion of land was notified but the owner desires acquisition of whole a ... necessary 17 Bom L R 192=28 Ind Cas 489 ... acquired under this Act unless the whole premises ... against an ... 605 The High Court has jurisdiction to inte- ... sition Deputy Collector refusing to refer a ... Civil Court 2 Pat L J 204, see also 46 C ... the owner to make such claim before ... would be the normal procedure 55 ... 426 The decisions under s 49 are

50 (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company

Acquisition of land at cost of a local authority or Company

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation

Provided that no such local authority or Company shall be entitled to demand a reference under section 18

Notes—Under sub section 2 the conmpany concerned is entitld to appear in any proceedings before the Collector or Court and to adduce evidence 'for the purpose of determining the amount of compensation 33 C 36=7 C W N 249

51 *No award or agreement made under this Act shall be chargeable* with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same

Exemption from stamp duty and fees

Notes—The award and agreement requisite under the Act are free from *stamp duty*

52 *No suit or other proceeding shall be commenced or prosecuted against* any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends

Notice in case of suits for anything done in pursuance of Act

Notes—This section refers to a tortuous act done under the enactment 30 C ... by an ... ist from ... 916=66 ... Ind Cas 500

53 Save in so far they may be inconsistent with anything contained in this Act the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act

Code of Civil Procedure to apply to proceedings before Court

... the C P C shall apply to all ... context clearly shows that a ... section 27 C 810 This ... only to proceedings before the

tion before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both

Notes—The word "wilfully" shows the presence of criminal intention

Magistrate to enforce surrender

47 If the Collector is opposed or impeded in taking possession under this Act of any land, he shall if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector

Completion of acquisition not compulsory, but compensation to be awarded when not completed

48 (1) Except in the case provided for in section 36 the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land

(3) The provisions of Part III of this Act shall apply so far as may be, to the determination of the compensation payable under this section

Notes—The Government in special cases provided in section 36, is at liberty to withdraw from the acquisition of any land of which possession has not been taken 30C 36=7 C W N 249 Proceedings commenced can be withdrawn under this section only by the Government 16 A L J 669=51 Ind Cas 501

Acquisition of part of house or building

49 (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house manufactory or building shall be so acquired

Provided that the owner may, at any time before the Collector has made his award under section 11 by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section the Collector shall refer the determ[illegible]

[illegible] on of

[illegible] stion

[illegible] and

[illegible] actory or building

(2) If, in the case of any claim under section 23 sub section (1), thirdly, by a person interested, on account of the se[illegible] of the land to be acquired

[illegible] opinion that the claim is un

[illegible] fore the Collector has made his

[illegible] land of which the land first

[illegible] no fresh declaration or other

[illegible] to 10, both inclusive, shall be necessary, but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

Notes—This section leaves no option to the Collector. 16 C W N 328. If land is not necessary adjunct to a house or other building, it can not be said to

THE LAND ACQUISITION (MINES) ACT 1885.

ACT NO XVIII OF 1885 *

RECEIVED THE G G's ASSENT ON THE 16TH OCTOBER, 1885

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870 †

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870† , It is hereby enacted as follows —

Short title, commencement and local extent

1 (1) This Act may be called The Land Acquisition (Mines) Act, 1885 , and

(2) It shall come into force at once

(3) It extends, in the first instance, to the territories administered by the Governor of Madras in Council and the Lieutenant Governor of Bengal , but any other Local Government may, from time to time by notification in the official Gazette extend this Act to the whole or any specified part of the territories under its administration

Notes —The object of the Act is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act 1870—*Statement of Objects and Reasons* The primary meaning of the word 'mine" standing alone is an underground excavation made for the purpose of getting minerals *Midland Railway* v *Haunchwood* L R 20 Ch D 555 , *Bell* v *Wilson* L R 1 Ch 303 Minerals primarily mean all substances (other than agricultural surface of the ground) which may be got for manufacturing or mercantile purposes whether from a mine as the word would seem to signify, or such as stone or clay which are got by open working 20 Ch D 555

Saving for mineral rights of the Government

2 Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals

Declaration that mines are not needed

3 (1) When the Local Government makes a declaration under section 6‡ of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may if it thinks fit, insert in the declaration a statement that the mines of coal, iron stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed

(2) When a statement as as aforesaid has not been inserted in the declaration made in respect of any land under section 6‡ of the Land Acquisition Act 1870, and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under

* Declared in force in—

(1) The Santhal Parganas (see Reg III of 1872 s 3 as amended by Reg III of 1886)

(2) Angul and the Khondmals (see Reg I of 1894 s 3)

† See Act I of 1894

‡ Corresponding with s 6 of Act I of 1894

section 11 * of the said Land Acquisition Act in respect of the mines, and may—

(a) when he makes an award under section 14 * of that Act, insert such a statement in his award ;

(b) when he makes a reference to the Court under section 15† of that Act, insert such a statement in his reference or

(c) when he takes possession of the land under section 17‡ of that Act, publish such a statement in such manner as the 'Local Government § from time to time, prescribe

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron stone slate or other minerals under the land or portion of the land specified in the statement except as aforesaid, shall not vest in the Government when the land so vests under the said Act

Notes—The word land means any land including minerals (1905) 1 Q B 464, (1891) A C 81, L R 3 App Cas 180 The effect of declaration under s 3 Cl (1) of the Act is that only so much of minerals would be acquired as might be necessary for the constructions of the work for which the land is acquired under the Land Acquisition Act A I R 1930 Pat 112=8 Pat 742

4 If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working

Notice to be given before working mines lying under land

Notes —*Vide* the observation of *Lord Cairns* in *Smith* v *Great Western Railway*, L R. 3 App Cas at p 178 Where he observed 'It is perfectly clear that what is contemplated by the Legislature under section 78 is that some person who, at the time of giving the notice which it contemplates is *entitled to work* the mines is the person who is entitled to give notice"

5 (1) At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose, and

Power to prevent or restrict working

(2) if it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon the Local Government may publish, ‖ a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same, or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any

* Corresponding with s 11 of Act I of 1894
† Corresponding with s 19 of Act I of 1894
‡ Corresponding with s 17 of Act I of 1894
§ The words within quotations have been added by Act 38 of 1920
‖ Certain words after this have been omitted by Act 38 of 1920

person save in the manner and subject to the restrictions specified by the Local Government

(5) 'Every declaration made under this section shall be published in such manner as the Local Government may direct *

Notes —When the mine owner s work is interfered with, he is entitled to claim compensation *Holiday* v *Mayor*, (1891) A C at p 94

Mode of determining persons interested and amount of compensation

6 When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interest ed in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications be ascertained in the manner provided by the Land Acquisition Act 1870 † for ascertaining the persons interested in the land to be acquired under that Act and the amounts of compensation payable to them respectively

Notes —In awarding compensation the true enqu ry is not what is the value of the mine or of the minerals but wha not been prohibited have made out of th to get the minerals (1903) A C 420 the cost of getting it must be the measu to the lessee L R 3 App Cas p 185

If Local Government does not offer to pay compensation, mines may be worked in a proper manner

7 (1) If, before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the local area where the same are situate

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner lessee or occupier of the mines shall at once, at his own expense repair the damage or remove the obstruction as the case may require

(3) If the repair or removal is not at once effected or if the Local Goven ment so thinks fit without waiting for the same to be effected by the owner lessee, or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby

Notes —If the t me has elapsed without a counter not ce the m ne owners may beg n the work and then as to such portions as he has worked the counter notice if it ever comes will come too late I R 5 A C 19 He may work in a manner most beneficial to h mself L L 2 H L p 39 L R 15 Ind Cas (1893) 1 Ch at p 453

Mining commun cations

8 If the working of any mines is prevented or restricted under section 5 the respective owners lessees and occupiers of the mines if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted may cut and make such and so many airways headways gateways or water levels through the mines measures or strata the working whereof is prevented or restricted as may be requisite to enable them to ventilate drain ar ... way headway gateway or water le ... tion than may be prescribed by the ... re no dimensions are so prescribed n ... ht feet high nor shall the same be

* The words with n quotat ons have been added by Act 38 of 1920

† See Act I of 1894

‡ Substituted by Act 38 of 1920

cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof

Notes —*Cf* sec ion 80 of the Railway Clauses Act of 1845

Local Government to pay compensation for injury done to mines,

9 The Local Government shall from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of th mines, the working of which is prevented or restricted, all such additional expenses and losses as may be in urred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections, and if any dispute or question arises between the Local Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870,*

Notes —The mine owners are entitled to any extra expenses incurred by him L. R 5 Ex. 6

and also for injury arising from any airway or other work

10 If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

Notes —*Vide* section 82 of the Railway Clauses Act of 1845

Power to officer of Local Government to enter and inspect the working of mines

11 For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twen[illegible] hours' notice in [illegible] the [illegible] is connected apl [illegible] use of any mi [illegible] cupier of the [illegible] means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked

Notes—*Cf* s 83 of the Railway Clauses Act of 1845

Penalty for refusal to allow inspection

12 If any owner, lessee or [illegible] refuses to [illegible] Local G [illegible] nto and ir [illegible] such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees

Notes —*Cf* section 84 of the Railway Clauses Act of 1845

* See Act I of 1894

If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired

13 If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired and the works thereon, and preventing injury thereto ; and if, after such notice, any such owner, lessee, or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier

Notes —*Cf* section 85 of the Railway Clauses Act 1845 (8 & 9 Vict c 20)

Construction of Act when land acquired has been transferred to a local authority or company

14 When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to or has vested by operation of law in a local authority or company, then sections 4 to 13, both inclusive shall be read as if for the words 'the Local Government, wherever they occur in those sections "except in section 5, sub-section (5) and section 8 '* the words, "the local authority or company, as the case may be, which has acquired the land," were substituted

Pending cases

15 This Act shall apply to any land for the acquisition whereof proceeding under the Land Acquisition Act, 1870,† are pending at the time when this Act comes into force, unless before that time the Collector has made in respect of the land, an award under section 14‡ or a reference to the Court under section 15§ of that Act or has taken possession of the land under section 17|| of the same

(2) When the Collector has before the said time made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act 1870,† to act for persons so interested, who have attended or may attend in the course of the proceedings under sections 11 to 15,¶ both inclusive, of the Land Acquisition Act, 1870 consent in writing to the application of this Act to the land, the Collector may, by an order in writing direct that it shall apply and thereupon it shall be deemed to have applied from the commencement of the proceedings and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement mentioned in section 3 of this Act

Definition of local authority and company

16 In this Act—

(*a*) "local authority" means any municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted

* The words within quotations, have been substituted by Act 38 of 1920
† See Act I of 1894
‡ [illegible]
§
||
¶ 1894
S 12 , „ s 13 „ „ „
S 13 „ „ s 15 „ „
S 14 „ s 12 „ , „
S 15 , , s 18 „ , „

by the Government with, the control or management of any municipal or local fund, and

(*b*) 'Company' means a Company registered under any of the enactments relating to Companies from time to time in force in British India or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent.

This Act to be read with Land Acquisition Act 1870

17 This Act shall for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870

LAND IMPROVEMENT LOANS ACT, 1883 *

ACT NO XIX OF 1883

RECEIVED THE G G'S ASSENT ON THE 12TH OCTOBER 1883

An act to consolidate and amend the law relating to loans of money by the Government for agricultural improvements

WHEREAS it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvement, It is hereby enacted as follows —

Short title

1 (1) This Act may be called the Land Improvement Loans Act, 1883

Local extent commencement

(2) It extends to the whole of British India, but shall not come into force in any part of British India until such date as the Local Government† may by notification in the local official Gazette, appoint in this behalf

Acts XXVI of 1871 and XXI of 1876 repealed

2 (1) The Land Improvement Act 1871, and Act XXI of 1876 (*An Act to amend the Land Improvement Act*, 1871), shall except as regards the recovery of advances made before this Act comes into force and costs incurred by the Government in respect of such advances be repealed

(2) When in any Act Regulation, or notification passed or issued before this Act comes in force, reference is made to either of those Acts the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act

Collector" defined

3 In this Act, 'Collector means the Collector of land revenue of a district, or the Deputy Commissioner, or any officer empowered by the Local Government by name or virtue of his office to discharge the functions of a Collector under this Act

Purposes for which loans may be granted under this Act

4 (1) Subject to such rules as may be made under section 10, loans may be granted under this Act, by such officer as may, from time to time, be empowered in this behalf by the Local Government for the purpose of making any improvement to any person having a right to make that improvement, or, with the consent of that person to any other person

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* Declared to be in force in the Sonthal Parganas Reg 3 of 1872, s 3 as amended by Reg 3 of 1899 s 3 in ... Act 13 of 1898, in British ... Reg 3 of 1913 s 3, in the ... of 1906

(2) "Improvement' means any work which adds to the letting value of land, and includes the following namely —

(a) the construction of wells tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture,

(b) the preparation of land for irrigation,

(c) the drainage reclamation from rivers or others waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes or waste land which is culturable,

(d) the reclamation clearance, enclosure or permanent improvement of land for agricultural purposes

(e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto and

(f) such other works as the Local Government * may from time to time, by notification in the local official Gazette, declare to be improvements for purposes of this Act

5 (1) When an application for a loan is made under this Act, the officer to whom the application is made may, if it is in his opinion expedient that public notice be given of the application, publish a notice in such [illegible] to time direct, calling upon him at a time and place fixed

Mode of dealing with applications for loans

(2) The officer shall consider every objection submitted under sub section (1) and make an order in writing either admitting or overruling it

Provided that when the question raised by an objection is in the opinion of the officer one of such a nature that it cannot be satisfactorily decided except by a Civil Court he shall postpone his proceedings on the application until the question has been so decided

6 (1) Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within such period from the date of the actual advance of the loan or when the loan is advanced in instalments "from the date of the advance of the last instalment actually paid' † as may from time to time be fixed by the rules made under this Act

Period for repayment of loans

(2) The period fixed as aforesaid shall not ordinarily exceed thirty five years

(3) *The Local Government** in making the rules fixing the period shall, in considering whether the period should extend to thirty five years or whether it should extend beyond thirty f [illegible]
work for the purpose of which the
cost of the work being paid by the
benefit by the work.

7 (1) Subject to such rules as may be made under section 10 all loans granted under this Act all interest (if any) chargeable thereon and costs (if any) incurred in making the same, shall when they become due be recoverable by the Colletor in all or any of the following modes namely —

Recovery of loans

(a) from the borrower—as if they were arrears of land revenue due by him,

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* Certain words after this have been omitted having been repealed by Act VIII of 1906

† These words were substituted by Act XVIII of 1899 S 2, for the words "*from the date of the actual advance of the last instalment* They shall be deemed to have been substituted with effect from the commencement of the Act

(*b*) form his surety (if any)—as if they were arrears of land revenue due by him,

(*c*) out of the land for the benefit of which the loan has been granted—
[illegible] respect of that land,
[illegible] ollateral security (if any)—accord [illegible] d revenue by the sale of immov able property other than the [illegible] at revenue is due

Provided that no proceeding in respect of any land under clause (*c*) shall affect any interest in that land which existed before the date of the order granting the loan other than the interest of the borrower and of mortgagees of or persons having charges on that interest and where the loan is granted under section 4 with the consent of another person the interest of that person and of mortgagees of or persons having charges on that interest

(2) When any sum due on account of any such loan interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security or recovered under sub section (1) by the Collector from a surety or out of any such property the Collector shall on the application of the surety or the owner of that property (as the case may be) recover that sum on his behalf from the borrower or out of the land for the benefit of which the loan has been granted in manner provided by sub section (1)

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it

Order granting loan conclusive on certain points

8 A written order under the hand of an officer empowered to make loans under this Act granting a loan to or with the consent of a person mentioned therein for the purpose of carrying out a work described therein for the benefit of land specified therein shall for the purposes of this Act be conclusive evidence—

(*a*) that the work described is an improvement within the meaning of this Act

(*b*) that the person mentioned had at the date of the order, a right to make such an improvement and

(*c*) that the improvement is one benefiting the land specified

Liability of joint borrowers as among themselves

9 When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute

Power to make rules

10 The Local Government * may from time to time by notification in the local official Gazette make rules consistent with this Act to provide for the following matters namely —

(*a*) the manner of making applications for loans

(*b*) the officers by whom loans may be granted

[illegible] for loans

[illegible] cation and repayment of the money, the rate of interest at which and the conditions under which loans may be granted and the manner and time of granting loans,

* Certain words after this have been omitted by Act IV of 1914

(e) the inspection of works for which loans have been granted ;

(f) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid ,

(g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same , and

(h) all other matters pertaining to the working of the Act

Exemption of improvements from assessment to land revenue

11 When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land revenue on the land :

Provided as follows :—

(1) where the improvement consists of the reclamation of waste land, or of irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government ,

(2) nothing in this section shall entitle any person to call in question any assessment of land revenue otherwise than as it might have been called in question if this Act had not been passed

Certain powers of Local Government to be exerciseable by Board of Revenue or Financial Commissioner

12* The powers conferred on a Local Government by sections 4 (1), 5 (1) and 10 may in a province for which there is a Board of Revenue or a Financial Commissioner, be exercised in the like manner and subject to the like conditions by such Board or Financial Commissioner, as the case may be Provided that rules made by a Board of Revenue or Financial Commissioner shall be subject to the control of the Local Government

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THE INDIAN LAW REPORTS ACT, 1875

ACT NO XVIII OF 1875

RECEIVED THE G G S ASSENT ON THE 13TH OCTOBER, 1875

An Act for the improvement of Law Reports

WHEREAS it is expedient to diminish the multitude and expense of the Law Reports published in British India, and to improve their quality , And WHEREAS, with a view to furthering these objects [it is proposed]† to authorize the publication of reports of cases decided by the High Courts of Judicature established under the twenty fourth and twenty fifth of Victoria, chapter 104 (and by the Chief Courts of Oudh) , ‡ "and Sind ' , § It is hereby enacted as follows —

Short title

1 This Act may be called the Indian Law Reports Act, 1875

Local extent

It extends to the whole of British India ;

Commencement

and it shall come into force on such day as the Governor General in Council notifies in this behalf in the *Gazette of India*

2 [Repeal of Act II of 1875—*Rep by Act XII of 1876*]

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* Section 12 was repealed by Act XVI of 1908 but again has been added by Act 4 of 1914

† Substituted by Act 38 of 1920

‡ Inserted by Act 32 of 1925

§ Substituted by Act 34 of 1926

(b) form his surety (if any)—as if they were arrears of land revenue due by him,

(c) out of the land for the benefit of which the loan has been granted—as if they were arrears of land revenue due in respect of that land;

(d) out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land revenue by the sale of immovable property other than the land on which that revenue is due:

Provided that no proceeding in respect of any land under clause (c) shall affect any interest in that land which existed before the date of the order granting the loan other than the interest of the borrower, and of mortgagees of or persons having charges on, that interest, and, where the loan is granted under section 4 with the consent of another person, the interest of that person, and of mortgagees of or persons having charges on, that interest

(2) When any sum due on account of any such loan, interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security, or recovered under sub section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub section (1)

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it

Order granting loan conclusive on certain points

8 A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

(a) that the work described is an improvem[illegible] within the meaning of this Act,

(b) that the person mentioned had, at the date of the order, a right to make such an improvement and

(c) that the improvement is one benefiting the land specified

Liability of joint borrowers as among themselves

9 When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute

Power to make rules

10 The Local Government,* may, from time to time, by notification in the local official Gazette make rules consistent with this Act to provide for the following matters, namely —

(a) the manner of [illegible]

*[illegible] after this have been omitted by Act IV of 1914

(e) the inspection of works for which loans have been granted ;

(f) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid ;

(g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same , and

(h) all other matters pertaining to the working of the Act

Exemption of improvements from assessment to land revenue

11 When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land revenue on the land :

Provided as follows :—

(1) where the improvement consists of the reclamation of waste land, or of irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government ,

(2) nothing in this section shall entitle any person to call in question any assessment of land revenue otherwise than as it might have been called in question if this Act had not been passed

Certain powers of Local Governmen tto be exerciseable by Board of Revenue or Financial Commissioner

12* The powers conferred on a Local Government by sections 4 (1), 5 (1) and 10 may in a province for which there is a Board of Revenue or a Financial Commissioner, be exercised in the like manner and subject to the like conditions by such Board or Financial Commissioner, as the case may be Provided that rules made by a Board of Revenue or Financial Commissioner shall be subject to the control of the Local Government

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THE INDIAN LAW REPORTS ACT, 1875

ACT NO XVIII OF 1875

RECEIVED THE G G S ASSENT ON THE 13TH OCTOBER, 1875

An Act for the improvement of Law Reports

WHEREAS it is expedient to diminish the multitude and expense of the Law Reports published in British India, and to improve their quality , And WHEREAS with a view to furthering these objects [it is proposed]† to authorize the publication of reports of cases decided by the High Courts of Judicature established under the twenty fourth and twenty fifth of Victoria, chapter 104 (and by the Chief Courts of Oudh) , ‡ ' and Sind ' , § It is hereby enacted as follows —

Short title

1 This Act may be called the Indian Law Reports Act, 1875

Local extent

It extends to the whole of British India ;

Commencement

and it shall come into force on such day as the Governor General in Council notifies in this behalf in the *Gazette of India*

2 [Repeal of Act II of 1875—*Rep by Act XII of 1876*]

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* Section 12 was repealed by Act XVI of 1908 but again has been added by Act 4 of 1914

† Substituted by Act 38 of 1920

‡ Inserted by Act 32 of 1925

§ Substituted by Act 34 of 1926

(*b*) form his surety (if any)—as if they were arrears of land revenue due by him,

(*c*) out of the land for the benefit of which the loan has been granted—

—accord

of immov

e (*c*) shall affect any interest in that land which existed before the date of the order granting the loan other than the interest of the borrower, and of mortgagees of or persons having charges on that interest and where the loan is granted under section 4 with the consent of another person the interest of that person, and of mortgagees of or persons having charges on that interest

(2) When any sum due on account of any such loan interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security or recovered under sub section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted in manner provided by sub section (1)

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it

Order granting loan conclusive on certain points

8 A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

(*a*) that the work described is an improvement within the meaning of this Act,

(*b*) that the person mentioned had, at the date of the order, a right to make such an improvement, and

(*c*) that the improvement is one benefiting the land specified

Liability of joint borrowers as among themselves

9 When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute

Power to make rules

10 The Local Government* may, from time to time, by notification in the local official Gazette make rules consistent with this Act to provide for the following matters namely —

(*a*) the manner of making applications for loans,

(*b*) the officers by whom loans may be granted,

(*c*) the manner of conducting inquiries relative to applications for loans and the powers to be exercised by officers conducting those inquiries,

(*d*) the nature of the security to be taken for the due application and repayment of the money, the rate of interest at which and the conditions under which loans may be granted, and the manner and time of granting loans,

* Certain words after this have been omitted by Act IV of 1914

(e) the inspection of works for which loans have been granted ;

(f) the instalments by which, and the mode in which loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid ,

(g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same , and

(h) all other matters pertaining to the working of the Act

Exemption of improvements from assessment to land revenue

11 When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land revenue on the land •

Provided as follows —

(1) where the improvement consists of the reclamation of waste land, or of irrigation of land assessed at unirrigated rates the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government ,

(2) nothing in this section shall entitle any person to call in question any assessment of land revenue otherwise than as it might have been called in question if this Act had not been passed

Certain powers of Local Government to be exercisable by Board of Revenue or Financial Commissioner

12* The powers conferred on a Local Government by sections 4 (1), 5 (1) and 10 may in a province for which there is a Board of Revenue or a Financial Commissioner, be exercised in the like manner and subject to the like conditions by such Board or Financial Commissioner, as the case may be Provided that rules made by a Board of Revenue or Financial Commissioner shall be subject to the control of the Local Government

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THE INDIAN LAW REPORTS ACT, 1875

ACT NO XVIII OF 1875

RECEIVED THE G G S ASSENT ON THE 13TH OCTOBER, 1875

An Act for the improvement of Law Reports

WHEREAS it is expedient to diminish the multitude and expense of the Law Reports published in British India, and to improve their quality , And WHEREAS with a view to furthering these objects [it is proposed]† to authorize the publication of reports of cases decided by the High Courts of Judicature established under the twenty fourth and twenty fifth of Victoria chapter 104 (and by the Chief Courts of Oudh) , ‡ ' and Sind ' , § It is hereby enacted as follows —

Short title

1 This Act may be called the Indian Law Reports Act, 1875

Local extent

It extends to the whole of British India ;

Commencement

and it shall come into force on such day as the Governor General in Council notifies in this behalf in the *Gazette of India*

2 [Repeal of Act II of 1875—*Rep by Act XII of 1876*]

---

* Section 12 was repealed by Act XVI of 1908 but again has been added by Act 4 of 1914

† Substituted by Act 38 of 1920

‡ Inserted by Act 32 of 1925

§ Substituted by Act 34 of 1926

3 No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it the report of any case decided by any of the said High Courts [or by the Cheif Court of Oudh]* [or the Chief Court of Sind †] on or after the said day, other than a report published under the authority of (any Local Government) †

Authority given only to authorized reports

Notes—Unreported case or ruling is not to be treated as an authority regard being had to this section 4 C W N 732 But this view was dissented from in 28 C 289=5 C W N 326 This section was framed to constitute a monopoly if the Judges so desired, for the authorised Law Report It does not prevent the Court from looking at an unreported judgment of other judges of the same Court 28 C 289=5 C W N 326, see also 24 O C 319 This Act has no application to a decision of the Privy Council and a Court is at liberty to refer to an unauthorised report of a decision of the Privy Council and if satisfied that it is a correct report, it is bound to follow it 48 M 1846=A I R 1926 Mad 20=20 M L J 498 A view expressed in a judgment of a High Court which has not been officially published even without reasons, is entitled to respect and any examination of it ought to start [illegible] not [illegible] must [illegible] be [illegible] and [illegible] in no part of the civilized world does the State enjoy the monopoly of publishing its own law reports In England law reports are not published by the State They are entrusted to a body of men known as the Incorporated Council of Law Reporting But they have no monopoly There are various other semi authorized reports, such as Law Journal Report, Times Law Report, Law Times Reports Solicitors' [illegible] *eeches on The Law* [illegible] from unauthorized [illegible] e practice prevailing [illegible] from which is cited in the bar 1930 M W N 955 Such decision is not absolutely binding 4 Rang 46=5 Bur L J 90=27 Cr L J 1396=98 Ind Cas 708; A I R 1925 Nag 414=8 N L J 414, A I R 1926 All 346=48 A 432=24 A L J 430=98 Ind Cas 376

4 Nothing herein contained shall be construed to give to any judicial decisions any further or other authority than it would have had if this Act had not been passed

Authority of judicial decisions

THE LAWS LOCAL EXTENT ACT, 1874

ACT No. XV OF 1874

RECEIVED THE G G'S ASSENT ON THE 8TH DECEMBER, 1874

An Act for declaring the Local extent of certain Enactments and for other purposes

WHEREAS it is expedient to declare the local extent of certain Acts passed by the Governor General of India in Council the Legislative Council of India, and the Council of the Governor General of India assembled for the purpose of making Laws and Regulations,

Preamble

And whereas it is also expedient to consolidate the laws relating to the local extent of certain Acts and Regulations in the Presidencies of Fort St George and Bombay, and in the Lower and the North Western Provinces of the Presidency of Fort William in Bengal, It is hereby declared and enacted as follows —

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* Inserted by Act 32 of 1925 † Inserted by Act 34 of 1926

Short title

1 This Act may be called the Laws Local Extent Act, 1874

Interpretation clause

2 In this Act the expression "Scheduled Districts' means the territories mentioned in the sixth schedule hereto annexed

Local extent of Acts in first schedule

3 The Acts mentioned in the first schedule hereto annexed are now in force throughout the whole of British India, except the Schedule Districts

Local extent of enactments in second schedule

4 The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Fort St George in Council, except the Scheduled Districts subject to such Government

Local extent of enactments in third schedule

5 The enactments mentioned in the third schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Bombay in Council except the Scheduled Districts subject to such government

Local extent of enactments in fourth schedule

6 The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant Governor of Bengal, except the Scheduled Districts subject to such government

Local extent of enactments in fifth schedule

7 The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant Governor of the North Western Provinces of the Presidency of Fort William, except the Scheduled Districts subject to such government

Savings

8 Nothing herein contained shall—

(*a*) bar the power of the Governor General in Council or the Local Government, under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule,

(*b*) extend any Act empowering the Local Government to extend the same or any part thereof, or affect in any manner the exercise of such power,

(*c*) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the Scheduled Districts;

(*d*) revive any enactment which has been repealed either generally or with reference to some special subject,

(*e*) [*Repealed by Act VII of 1887, s 2*]

(*f*) [*Repealed by Act XII of 1891, Sch I*]

(*g*) [*Repealed by Act VIII of 1890*]

(*h*) [*Repealed by Act VIII of 1887, s 2.*]

(*i*) [*Repealed by Act IV of 1894*]

(*j*) extend to any of the Towns of Calcutta, Madras and Bombay any law not now in force therein,

(*jj*)* extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswa Raja in the Benares District, any law not now in force therein,

(*k*) affect the operation of any enactment not mentioned in any of the schedules hereto annexed

9 [*Repealed by Act XII of 1876*]

* Cl (jj) has been inserted by Act XIV of 1881, s 15

FIRST SCHEDULE *

(See section 3)

ACTS OF THE SUPREME COUNCIL

Year and Number		Subject
1837	†IV	Power to acquire land
1838	XXV	Wills executed before the 1st January, 1866
1839	XXIX	Dower, when marriage was contracted before 1st January 1866
1839	XXX	Inheritance where descent took place before 1st January, 1866
1839	XXXII	Interest
1841	X	Registration of ships
1843	V	Slavery
1850	V	Coasting Trade
1850	XI	Navigation Laws
1850	XII	Default of Public Accountants
1850	XVIII	Protection of Judicial Officers
1850	XIX	Binding of Apprentices
1850	XXI	Non forfeiture of rights by loss of caste
1850	XXXIV	State Prisoners
1850	XXXVII	Inquires into the behaviour of public servants
1853	II	Burdens on land
1854	XXXI	Barring entails, conveyance by married women
1855	XI	Mesne profits and improvements
1855	XII	Executors and Administrators
1855	XIII	Compensation for loss occasioned by death caused by actionable wrong
1855	XXIII	Administration of mortgaged estates in cases of descents occurring or devises made before the 1st January, 1866
1855	XXIV	Penal Servitude
1855	XXVIII	Interest
1856	IX	Bills of Lading
1856	XI	Desertion by European Soldiers
1856	XV	Marriage of Hindu Widows
1857	XI	*Offences against the State*
1857	XXV	*Forfeiture by Mutineers*
1858	III	State Prisoners
1858	XXXV	*Estates of Lunatics not subject to jurisdiction of Supreme Courts*
1858	‡XXXVI	Lunatic Asylums
1859	IX	Sections 16, 17 18 and 20—Forfeitures
1860	XXI	Registration of Societies
1862	III	Government Seal
1863	XVI	Excise Duty payable on Spirits used in Arts and Manufactures

* So much of Sch I as relates to Acts XI of 1841 XII of 1842, XXXIII of 1852 and III of 1859 has been repealed by Act VIII of 1887 s 2 so much as relates to Act VI of 1840 by Act XXVI of 1881 s 2, so much as relates of 1841, by Act XI of 1878, so much as relates to Act XVIII of 1889 s 2 and Sch I, so much as relates to Act XXVII of 1860 by Act VIII Act IX of 1887, so much as relates to Acts XI of 1865 and X of 1867 by 1859 XIV of 1859, XV of 1859, XXIII of 1861, VI of 1863 X of 1866, and X of 1868, by Act XII of 1891 Sch I

† Certain entries before this repealed by Act XII of 1927 have been omitted

‡ Certain entries after this repealed by Act 21 of 1923 have been omitted

Year and Number		Subject
1863	XXIII	Claims to waste lands
"	XXXI	*Gazette of India*
1864	III	Foreigners
1865	*III	Common Carriers
"	XV	Marriage and Divorce among Parsees
1866	XXI	Dissolution of Marriages of Native Converts
"	XXVIII	Trustees and Mortgagee's Powers
1867	XXV	Printing Presses, &c

SECOND SCHEDULE †

(*See Section 4*)

(*a*)—Madras Regulations

Year and Number		Subject
1802	III (s 1, part of s 16 only)]	Procedure of Civ l Courts
"	(V s 30)	Sadar Adalat to act according to justice &c
"	XIX (s 2)	Covenanted Civil Servants forbidden to lend
"	XXV	Settlement of Land revenue
"	XXVI (ss 1, 2 & 3 only)	Registration of malguzari land
"	XXIX	Karnams
1803	I	Board of Revenue
"	II	Conduct of Collectors &c
1804	V	Court of Wards
1806	II (section 7 clause second) ‡	Collectors and Karnams
1808	VII	*Martial Law*
1816	XI	Sections 8, 9, 10—Heads of villages, Section 11, cl (1)—Stolen property, Section 13—Discovery of [illegible] Section 14—Reg[illegible] of persons confined [illegible] —Magistrates
"	XII	[illegible] ıd produce to
1817	VII	[illegible]
"	VIII (s 9 only)	Sale for arreas of revenue of estate belonging to Native Officer or Soldier
1819	II	State Prisoners
1822	IV	Explanation of Madras Regulation XXV of 1802

* [illegible] led by Act [illegible]
[illegible] ates to Ma[illegible]
[illegible] of 1821
[illegible] I of 1832 by Act [illegible] so much as relates
[illegible] III of 1889 s 2 and sch, and so much as relates
[illegible] 805 [illegible] II of 1807, IV of 1816, IX of 1816, and XIV

‡ [illegible] Mad Reg II of 1806 has been substituted for (parts of ss 1 and 7) by Act XII of 1891 Sch II The whole of Reg II of 1806 except the second clause of s 7 has been repealed by Act XII of 1876

Year and Number			Subject
1863	XXIII	...	Claims to waste lands
,,	XXXI	..	*Gazette of India*
1864	III	..	Foreigners
1865	*III	..	[illegible]
,,	XV	..	[illegible] es
1866	XXI	...	[illegible] Converts
,,	XXVIII	...	[illegible]
1867	XXV	...	Printing Presses, &c

SECOND SCHEDULE †

(See Section 4)

(*a*)—Madras Regulations

Year and Number			Subject
1802	III (s 1, part of s 16 only)		Procedure of Civil Courts
,,	(V s 30)	.	Sadar Adalat to act according to justice &c
,,	XIX (s 2)	..	Covenanted Civil Servants forbidden to lend
,,	XXV	.	Settlement of Land revenue
,,	XXVI (ss 1, 2 & 3 only)		Registration of malguzari land
,,	XXIX	.	Karnams
1803	I	...	Board of Revenue
,,	II	...	Conduct of Collectors, &c
1804	V	.	Court of Wards
1806.	II (section 7 clause second) ‡		Collectors and Karnams
1808	VII	...	*Martial Law.*
1816	XI	.	Sections 8, 9, 10—Heads of villages , Section 11, cl (1)—Stolen property , Section 13—Discovery of [illegible] persons confined [illegible] —Magistrates
,,	XII	.	[illegible] ıd produce to
1817.	VII	...	[illegible]
,,	VIII (s 9 only)	..	Sale for arreas of revenue of estate belonging to Native Officer or Soldier
1819	II	..	State Prisoners
1822.	IV		Explanation of Madras Regulation XXV of 1802

* Certain entry before this repealed by Act 12 of 1927 has been omitted

† So much of Sch II (*a*) as relates to Mad Regs I of 1810, III of 1831 and VII of 1832, and to s 4 of Mad Reg IV of 1821 has been repealed by Act XII of 1876, [illegible] VI of 1832 by Act VI of 1878, so much as relates [illegible] VIII of 1889, s 2 and sch, and so much as relates [illegible] f 1805 II of 1807, IV of 1816, IX of 1816, and XIV [illegible]

[illegible] f Mad Reg II of 1806 has been substituted for ('parts of ss 1 and 7) by Act XII of 1891 Sch II The whole of Reg II of 1806 except the second clause of s 7 has been repealed by Act XII of 1876.

Year and Number		Subject
1822	VIII [cl. (1) of s. 3 [illegible]]	[illegible] O[illegible] of Revenue and other public Departments
"	IV	Employment of public servants [illegible]
1823		
1828	VII	Powers of [illegible] Collectors
1829	V	H[illegible] and Estates
1830	I	Pro[illegible]
1831	[illegible]	Liability of [illegible] Officers [illegible] stamped documents
"	VI	He[illegible] O[illegible]
"	X	Pr[illegible] of Sale of Estates [illegible] for Arrears of Revenue
1832	II	Lim[illegible] against officers of Revenue Ac[illegible] under Madras Regulation VII of 1822

(b)* Acts of the Supreme Council relating to the Madras Presidency.

1837	XXXVI	Criminal Jurisdiction of Collectors
18[illegible]	[illegible]	Tahsildars
1840	[illegible]	Awards of Panchayats
1844	VI	Duties
1846	I[illegible]	Pleaders ‡
1849	X	Commissioners of Revenue
1853	XX[illegible]	Pleaders
1857	VII	Uncovenanted Agency
1856	I	Compulsory Labour
1859	XXIV	Police

THIRD SCHEDULE §

(See Section 5)

(a)—Bombay Regulations.

Year and Number		Subject
1827	II	Section 21 (caste questions) ‖
"	IV¶	Section 26 (law applicable to suits), section 69 clauses *second* and *third* (attachment and distraint of crops)
"	V	Preamble, section 9 (acknowledgements of debt), section 14 (interest), section 15 (mortgages and pledges)
"	VIII	Administration of Estates

[illegible] has been repealed by Act XII of 1891, Sch I, and so much as relates to ss 18, 19, 20, 45, 46 and 47 of Bom Reg XXII of 1827 by Act XIII of 1889 s 2 and Sch [illegible] preamble XVI

‖ Certain words after this repealed by Act 12 of 1927 have been omitted.

¶ Cls (2) and (3) of s 69 of Bom. Reg IV of 1827 have been repealed in the whole of the Bombay Presidency (except the Scheduled Districts) by Bom Act V of 1879.

YEAR AND NUMBER.			SUBJECT
1827	*XII**	...	*Section 19 (Magistrate's power to make rules):* section 20 (standards of weights and measures) section 27, clause 2 (supervision of suspected persons), section 37 clauses *first* and *second* (responsibility of villages for robberies)
"	XIII	...	Section 34 clause *third* (letter substituted for summons)
"	XXII	..	Sections 40, 41, 42, 43 (Passage of troops)
1827	XXV	.	State Prisoners
1830	*V*†	...	[illegible]
"	XIII	...	
1831	*XV*†	...	*Village Patels*
1832	*II*†	..	*Realization of Revenue*
1833.	*V*†	..	*Hereditary Officers*

(*b*) ACTS OF THE SUPREME COUNCIL RELATING TO THE BOMBAY PRESIDENCY ‡

1838	XVI	...	Judiciary.
"	*XVIII*§	...	*Sureties*
"	XIX	...	Coasting Vessels,
1839.	XX	.	Revenue
1840	XV	...	Agents of Foreign Sovereigns
1842	*XIII*§		*Revenue*
"	*XVII*‖	...	*Revenue Commissioners*
1844	XIX	...	Abolition of Town Duties
1846	I	...	Pleaders
"	*III*	..	*Section 1, 5 and 6—Boundary Marks*
1853	XX	..	Pleaders

FOURTH SCHEDULE ¶

(*See section 6*).

(*a*)—BENGAL REGULATIONS (LOWER PROVINCES)

YEAR AND NUMBER			SUBJECT
1793	I	...	Perpetual Settlement
"	II	...	Collection of Land Revenue
"	VII	..	Rules for Decennial Settlement

* The preamble and part of s 19 of Bom Reg XII of 1827 have been repealed by Act XVII of 1862.

† Bom Regs XVI of 1827, V of 1830, XV of 1831, II of 1832, and V of 1833, have been repealed in the whole of the Bombay Presidency (except the Scheduled District) by Bom Act V of 1879

‡ Act III of 1852 has been repealed by Bom Act V of 1878

§ Act XVIII of 1838, XIII and XVII of 1842, III of 1846, and XXI of 1852, have [illegible] Presidency (except the Scheduled Districts)

[illegible] XI of 1843, III of 1853, and XXI of [illegible]

¶ [illegible] Ben Regs XLVIII of 1793, III of [illegible] XVII of 1806, XI of 1811, XIX of 1814, XX [illegible] Act XII of 1891 Sch I; [illegible] of 1889, s. 2 and sch, [illegible] 1820; by Act XII of [illegible] I of 1878, and so much [illegible]

Year and Number.		Subject
1793	XI	Native laws of inheritance to Revenue paying land
"	XIX	Title to lands exempt from Revenue
"	XXXVII	Title to lands exempt from Revenue under Badshahi grants
"	XXXVIII	Section 1—Preamble Section 2—Prohibition of loans by Covenanted Servants
1794	III	Sections 13 16, 17, 18, 19 and 20—Arrears of Revenue
1799	V	Wills and Intestacies of Natives
1800	VIII	Pargana Register of Lands
1801	I	Arrears of Revenue Division of Joint Estates
1804	X	Punishment by Courts Martial of certain State Offences
1806	XI	Passage of Troops
1810	XIX	[illegible]
1812	V	[illegible]
"	XI	[illegible]
1817	XX	[illegible] sepoys [illegible] stores, Encroaching on roads
1818	III	State Prisoners
1819	II	[illegible]
1821	IV	[illegible]
1822,	III*	[illegible]
"	XI	[illegible] of officers of Courts
1823	VI	Indigo Contracts
"	VII	[illegible]
1825	VI	[illegible] Civil Servants
"	IX	[illegible]
	XI	[illegible]
"	XIII	[illegible]
"	XIV	[illegible] tenures Native Grants
1827	III	Section 5—Evidence
"	V	Management of Estates under Attachment
1828	III	Appeals from decisions of Revenue Authorities
"	IV	Section 1 and Section 2, clause (4)—Time during which Collectors are to be considered engaged in making settlements
1829	I	Commissioners of Revenue and Board of Revenue
"	XVII	Widow burning
1830	V	Sections 1 and 5—Indigo Contracts
(b)†—Acts of the Supreme Council relating to the Lower Provinces		
1836	X	Indigo [illegible]
"	XXI	[illegible]
1841	XII	[illegible]
1847	IX	[illegible]
1848	XX	Land revenue [illegible]

* So much of this Schedule as relates to Bengal Regulation III of 1822 has been repealed in Bengal by Ben Act III of 1913 in Bihar and Orissa by B and O Act of 1913

† So much of Sch IV (b) as relates to Acts XX of 1836 XI of 1838, XX and XXI of 1826, and XXIII of 1860 has been repealed by Act XII of 1891 Sch, I

Year and Number		Subject
1850	XLIV*	Board of Revenue
1855	XXXII†	*Embankments*
1856	XII	Civil Court Amins
1857	XIII	Opium
1858	XXXI	Settlement of alluvion
1859	XI	Sales for Arreas of Revenue

FIFTH SCHEDULE ‡

(*See Section 7*)

(a)—Bengal Regulations (North Western Provinces)

Year and Number		Subject
1793	XXXVIII	Section 1—Preamble Section 2—Prohibition of loans by Covenanted Servants
1799	V	Wills and Administration to Natives
1804	X	Punishment by Courts martial of certain State Offences
1806	XI	Passage of Troops
1812	XI	Removal of Foreign Emigrants
1818	III	State Prisoners
1822	XI	Section 38—Non liability of Government for errors of Courts
1823	VI	[illegible]
	VII	[illegible] Servants
1825	VI	[illegible]
1825	XI	[illegible]
18?7	III	[illegible]
	V	[illegible] nt
1829	XVII	[illegible]
1830	V	[illegible]
1831	XI§	Sections 1, 2 5 6—Police powers of Tashildars
1833	IX	Deputy Collectors

(b)—Acts of the Supreme Council relating to the N W Provinces

Year and Number		Subject
1836	X	Indigo Contracts ‖
1854	XVI	Police
1856	XII	Civil Courts Amins
	XX	Chaukidars
1857	XIII	Opium

* After this Act XIX of 1853 has been repealed by Act I of 1903 and so much of this schedule as relates to Act XLIV of 1850 has been repealed in Bengal by Ben Act III of 1913 and in Bihar and Orissa by B & O Act I of 1913

† Act XXXII of 1855 has been repealed (except as to Orissa and the Sundarbans) by Ben Act VI of 1873

‡ So much of Sch V as relates to Bengal Reg XX of 1810 has been repealed by Act XII of 1889 s 2 and sch and so much as relates to Ben Reg I of 1798, XVII of 1803 XIX of 1810 V of 1817 VI of 1819 VI of 1831 and XI of 1831 ss 4 and 8 by Act XII of 1891 Sch 1 So far as Act XV of 1874 relates to Ben Reg I of 1833 it has been repealed by Act VIII of 1875 and so far as it relates to Ben Reg XX of 1825 by Act X of 188?

§ Ss 4 and 8 of Reg XI of 1831 have been repealed by Acts XI of 1876 and XVI of 1874 respectively

‖ After this Act XIX of 1853 has been repealed by Act I of 1903

Year and Number		Subject
1793	XI	Native laws of inheritance to Revenue paying land
	XIX	Title to lands exempt from Revenue
"	XXXVII	Title to lands exempt from Revenue under Badshahi grants
	XXXVIII	Section 1—Preamble Section 2—Prohibition of loans by Covenanted Servants
1794	III	Sections 13 16 17 18 19 and 20—Arrears of Revenue
1799	V	Wills and Intestacies of Natives
1800	VIII	Pargana Register of Lands
1801	I	Arrears of Revenue Division of Joint Estates
1804	X	Punishment by Courts Martial of certain State Offences
1806	XI	*Passage of Troops*
1810	XIX	Maintenance of Bridges &c Escheats
1812	V	Collection of Land Revenue.
	XI	Removal of foreign Emigrants
1817	XX	Section 29—Criminal process in Salt and Opium Departments Section 30 clauses (1), (2) and (5)—Building forts Collecting sepoys and stores; Encroaching on roads
1818	III	State Prisoners
1819	II	
1821	IV	
1822	III*	
"	XI	purchases by Government, Section 38—Non liability of Government for errors of Courts
1823	VI	Indigo Contracts
"	VII	Servants
1825	VI	
	IX	
	XI	
"	XIII	Settlement of resumed Lakhiraj land
	XIV	Authority to confirm Lakhiraj tenures Native Grants
1827	III	Section 5—Evidence
"	V	
1828	III	
"	IV	
		making settlements
1829	I	Commissioners of Revenue and Board of Revenue
"	XVII	Widow burning
1830	V	Sections 1 and 5—Indigo Contracts

(*b*)†—Acts of the Supreme Council relating to the Lower Provinces

1836	X	
	XXI	
1841	XII	
1847	IX	
1848	XX	Land revenue.

* So much of this Schedule as relates to Bengal Regulation III of 1822 has been repealed in Bengal by Ben Act III of 1913 in Bihar and Orissa by B and O Act of 1913

† So much of Sch IV (*b*) as relates to Acts XX of 1836 XI of 1838, XX and XXI of 1826, and XXIII of 1860 has been repealed by Act XII of 1891 Sch, I

Year and Number		Subject
1850	XLIV*	*Board of Revenue*
1855	XXXII†	*Embankments*
1856	XII	Civil Court Amins
1857	XIII	Opium
1858	XXXI	Settlement of alluvion
1859	XI	Sales for Arreas of Revenue

FIFTH SCHEDULE ‡

(*See Section 7*).

(*a*)—Bengal Regulations (North Western Provinces)

Year and Number		Subject
1793	XXXVIII	Section 1—Preamble Section 2—Prohibition of loans by *Covenanted Servants*
1799	V	Wills and Administration to Natives
1804	X	Punishment by Courts martial of certain State Offences
1806	XI	Passage of Troops
1812	XI	Removal of Foreign Emigrants
1818	III	State Prisoners
1822	XI	Section 38—Non liability of Government for errors of Courts
1823	VI	Indigo Contracts
,,	VII	Prohibition of loans to Covenanted Civil Servants
1825	VI	Passage of Troops
1825	XI	
1827	III	
	V	
1829	XVII	
1830	V	
1831	XI§	Sections 1, 2, 5, 6—Police powers of Tashildars
1833	IX	Deputy Collectors
(*b*)—Acts of the Supreme Council relating to the N W Provinces		
1836	X	Indigo Contracts ‖
1854	XVI	Police
1856	XII	Civil Courts Amins
	XX	Chaukidars
1857	XIII	Opium

* *After this Act XIX of 1853 has been repealed by Act I of 1903 and so much of* this schedule as relates to Act XLIV of 1850 has been repealed in Bengal by Ben Act III of 1913 and in Bihar and Orissa by B & O Act I of 1913

† Act XXXII of 1855 has been repealed (except as to Orissa and the Sundarbans) by Ben Act VI of 1873

‡ So much of Sch V as relates to Bengal Reg XX of 1810 has been repealed by Act XII of 1889 s 2 and sch and so much as relates to Ben Reg I of 1798, XVII of 1806, XIX of 1810 V of 1817, VI of 1819 VI of 1831 and XI of 1831 ss 4 and 8 by Act XII of 1891, Sch 1 So far as Act XV of 1874 relates to Ben Reg 1 of 1833, [illegible] it relates to Ben Reg XX of

[illegible] by Acts XI of 1876 and XVI

[illegible] Act I of 1903

Year and Number.		Subject
1793	XI	Native laws of inheritance to Revenue paying land
"	XIX	Title to lands exempt from Revenue
"	XXXVII	Title to lands exempt from Revenue under Badshahi grants
"	XXXVIII	Section 1—Preamble Section 2—Prohibition of loans by Covenanted Servants
1794	III	Sections 13 16, 17, 18, 19 and 20—Arrears of Revenue
1799	V	Wills and Intestacies of Natives
1800	VIII	Pargana Register of Lands
1801	I	Arrears of Revenue Division of Joint Estates
1804	X	Punishment by Courts Martial of certain State Offences
1806	XI	Passage of Troops
1810	XIX	Maintenance of Bridges &c , Escheats
1812	V	Collection of Land Revenue.
"	XI	Removal of foreign Emigrants
1817	XX	Section 29—Criminal process in Salt and Opium Departments Section 30 clauses (1), (2) and (5)—Building forts, Collecting sepoys and stores, Encroaching on roads
1818	III	State Prisoners
1819	II	[illegible]
1821	IV	[illegible]
1822	III*	[illegible]
"	XI	[illegible] purchases by Government , Section 38—Non liability of Government for errors of Courts
1823	VI	Indigo Contracts
"	VII	[illegible] Servants
1825	VI	
"	IX	
"	XI	
"	XIII	Settlement of resumed Lakhiraj land
"	XIV	Authority to confirm Lakhiraj tenures Native Grants
1827	III	Section 5—Evidence
"	V	[illegible]
1828	III	
"	IV	[illegible] during which Collectors are to be considered engaged in making settlements
1829	I	Commissioners of Revenue and Board of Revenue
"	XVII	Widow burning
1830	V	Sections 1 and 5—Indigo Contracts

(*b*)†—ACTS OF THE SUPREME COUNCIL RELATING TO THE LOWER PROVINCES

1836	X	Indigo Contracts
"	XXI	Creating Zilas
1841	XII	Section 2—No interest on arrears of Land revenue
1847	IX	Assessment of new lands
1848	XX	Land revenue.

* So much of this Schedule as relates to Bengal Regulation III of 1822 has been repealed in Bengal by Ben Act III of 1913 in Bihar and Orissa by B and O Act of 1913

† So much of Sch IV (*b*) as relates to Acts XX of 1836 XI of 1838, XX and XXI of 1826, and XXIII of 1860 has been repealed by Act XII of 1891, Sch. I

Year and Number			Subject
1850	XLIV*		Board of Revenue
1855	XXXII†		*Embankments*
1856	XII	..	Civil Court Amins
1857	XIII	.	Opium
1858	XXXI	.	Settlement of alluvion
1859	XI	.	Sales for Arreas of Revenue

FIFTH SCHEDULE ‡

(*See Section 7*).

(*a*)—Bengal Regulations (North Western Provinces)

Year and Number			Subject
1793	XXXVIII		Section 1—Preamble Section 2—Prohibition of loans by Covenanted Servants
1799	V		Wills and Administration to Natives
1804	X		Punishment by Courts martial of certain State Offences
1806	XI		Passage of Troops
1812	XI		Removal of Foreign Emigrants
1818	III		State Prisoners
1822	XI	.	Section 38—Non liability of Government for errors of Courts
1823	VI		Indigo Contracts
„	VII		Prohibition of loans to Covenanted Civil Servants
1825	VI		Passage of Troops
1825	XI		Alluvion and Dereliction
1827	III		Section 5—Evidence
„	V	.	Management of Estates under attachment
1829	XVII		Widow burning
1830	V		Sections 1 and 5—Indigo Contracts
1831	XI§		Sections 1, 2, 5, 6—Police powers of Tahsildars
1833	IX		Deputy Collectors

(*b*)—Acts of the Supreme Council relating to the N W Provinces

Year and Number			Subject
1836	X		Indigo Contracts ‖
1854	XVI		Police
1856	*XII*	..	*Civil Courts Amins*
„	XX	..	Chaukidars
1857	XIII		Opium

* After this Act XIX of 1853 has been repealed by Act I of 1903 and so much of this schedule as relates to Act XLIV of 1850 has been repealed in Bengal by Ben Act III of 1913 and in Bihar and Orissa by B & O Act I of 1913

† Act XXXII of 1855 has been repealed (except as to Orissa and the Sundarbans) by Ben Act VI of 1873

‡ So much of Sch V as relates to Bengal Reg XX of 1810 has been repealed by Act XII of 1889 s 2 and sch and so much as relates to Ben Reg I of 17[illegible] XVI of 1806, XIX of 1810, V of 1817 VI of 1819 VI of 1831 and XI of 1831 ss [illegible] and [illegible] by Act XII of 1891, Sch I So far as Act XV of 1874 relates to Ben Re[illegible] [illegible] 875, and so far as it relates to Ben Reg [illegible]

[illegible] ve been repealed by Acts XI of 187[illegible]

[illegible] en repealed by Act I of 1903

7. Panchmarhi
8. Partabgarh
9. Almod
10. Sonpur
11. Barian Pagara

PART VII

The Chief Commissionership of Coorg

PART VIII

The Chief Commissionership of the Andaman and Nicobar Islands

PART IX

The Chief Commissionership of Ajmer and Merwara

PART X

The Chief Commissionership of Assam

PART XI

The Hill Tracts of Arakan

PART XII

The Parganas of Manpur.

PART XIII

(The Cantonment of Morar)—Rep by the Repealing and Amending Act, 1891 (XII of 1891)

SEVENTH SCHEDULE (Repealed)

THE LEGAL PRACTITIONERS ACT, 1846 *

ACT NO 1 OF 1946·

RECEIVED THE GOVERNOR GENERAL'S ASSENT ON THE 7TH JANUARY, 1846

An Act for amending the Law regarding appointment and remuneration of Pleaders in the Courts of the East India Company

1, 2 & 3 [Repeal of enactments]—*Rep by Act XVI of 1874*

Office of pleader open to persons duly certificated

4 † The office of pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion Provided that no person shall be admitted a pleader in any of those Courts unless he has obtained a certificate in such manner as shall be directed by the Sadar Courts that he is of good character and duly qualified for the office, any law or regulation to the contrary notwithstanding

Right of barrister to plead in all Courts

5 Provided † that every barrister of any of Her Majesty's Courts of Justice in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules in force in the said Sadr Courts applicable to pleaders whether relating to the language in which the Court is to be addressed or to any other matter

Enactment to cease to have force, except for specified purposes

6 † Section 52, Regulation II, 1827, of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in section 7 of this Act

7 † [illegible] Courts shall be at

Private parties an[illegible]

[illegible] private agreement [illegible] their professional [illegible] it shall not be necessary to specify such agreement in [illegible]

[illegible]ct 14 of 1897
1 of 1874

Year and Number		Subject
1850	XLIV*	Board of Revenue
1855	XXXII†	*Embankments*
1856	XII	Civil Court Amins
1857	XIII	Opium
1858	XXXI	Settlement of alluvion
1859	XI	Sales for Arreas of Revenue

FIFTH SCHEDULE ‡

(*See Section 7*).

(*a*)—Bengal Regulations (North Western Provinces)

Year and Number		Subject
1793	XXXVIII	Section 1—Preamble Section 2—Prohibition of loans by Covenanted Servants
1799	V	Wills and Administration to Natives
1804	X	Punishment by Courts martial of certain State Offences
1806	XI	Passage of Troops
1812	XI	Removal of Foreign Emigrants
1818	III	State Prisoners
1822	XI	Section 38—Non liability of Government for errors of Courts
1823	VI	Indigo Contracts
,	VII	Prohibition of loans to Covenanted Civil Servants
1825	VI	Passage of Troops
1825	XI	Alluvion and Dereliction
1827	III	Section 5—Evidence
	V	Management of Estates under attachment
1829	XVII	Widow burning
1830	V	Sections 1 and 5—Indigo Contracts
1831	XI§	Sections 1, 2, 5 6—Police powers of Tashildars
1833	IX	Deputy Collectors
(*b*)—*Acts of the Supreme Council relating to the N W Provinces*		
1836	X	Indigo Contracts ‖
1854	XVI	Police
1856	XII	Civil Courts Amins
,	XX	Chaukidars
1857	XIII	Opium

* After this Act XIX of 1853 has been repealed by Act I of 1903 and so much of this schedule as relates to Act XLIV of 1850 has been repealed in Bengal by Ben Act III of 1913 and in Bihar and Orissa by B & O Act I of 1913

† Act XXXII of 1855 has been repealed (except as to Orissa and the Sundarbans) by Ben Act VI of 1873

‡ So much of Sch V as relates to Bengal Reg XX of 1810 has been repealed by Act XII of 1889
of 1806, XIX of 181[illegible]
by Act XII of 1891
[illegible] ts to Ben Reg [illegible]
ts XI of 1876 a
1903

SIXTH SCHEDULE.

(*See sections 2, 3, 4, 5, 6 and 7*)

PART I.

SCHEDULED DISTRICTS, MADRAS

I.—In Ganjam

(1) The Gumsur Maliahs, including Chokapad
(2) The Surada Maliahs
(3) The Chinna Kimedi Maliahs
(4) The Pedda Kimedi Maliahs
(5) The Bodaguda Maliahs
(6) The Surangi Maliahs
(7) The Parla Kimedi Maliahs
(8) The Muttas of Korada and Ronaba (otherwise called Srikarma)
(9) [*Repealed by Act XII of 1891, Sch I*]
(10) The Jurada Maliah
(11) The Jalantra Maliah
(12) The Mandasa Maliah
(13) The Budarasinghi Maliah
(14) The Kuttingia Maliah

II.—In Vizagapatam

(1) The Jeypur Zemindari
(2) Golconda Hills, West of the River Boderu *
(3) The Madugol Maliahs
(4) The Kasipur Zamindari
(5) The Panchipenta Maliahs
(6) Mondemkolla in the Merangi Zamindari
(7) The Konda Mutta of Merangi †
(8) The Gumma and Konda Muttas of Kurpam
(9) The Kot am Ram and Konda Muttas of Palkonda

III.—In the Godavari Districts

(1) The Bhadrachalam Taluq
(2) Rakapilli Taluq
(3) Rampa Country

IV.—In the Indian Ocean

The Laccadadive Islands, including Minicoy

PART II.

SCHEDULED DISTRICTS BOMBAY

I The Province of Sindh
II [*The Panch Mahals*]—Rep by the Panch Mahals Laws Act, 1885 (VII of 1885) with effect from the first May, 1895
III Aden
IV The villages belonging to the following Mehwassi Chiefs —
(1) The Parvi of Kathi
(2) The Parvi of Nal
(3) The Parvi of Singpur
(4) Walwi of Gaohalli
(5) The Wassawn of Chikhli
(6) The Parvi of Nawalpur

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* The Ducharti and Guditeru Muttas in the Golconda Hills have been transferred from the Vizagapatam to the Godavari District—See *Fort St George Gazette*, July 5, 1881, Pt 1 P 336 For additional Scheduled Districts in the Godavari District, see Appendix B to the Scheduled Districts Act 1874, XIV of 1874

† The word "Merangi" has been substituted for "Belgam" by Act XII of 1891 Sch II

PART III

SCHEDULED DISTRICTS, BENGAL

I T... Districts
II
III
IV
V.

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES

I [*The Jhansi Division, comprising the Districts of Jhansi, Jalaun and Lalatpur*] Rep by Act XX of 1890 s 8 (1)

II The provinces of Kumaon and Garhwal

III The Tarai Parganas, comprising Bazpur, Kasipur, Jaspur, Rudrapur, Gardarpur, Kilpuri Nanak Mattha and Bilheri

IV. In the Mirzapur District—

(1) The tappas of Agor, Khar and South Kon ... the Pargana of Agor

(2)

(3)

(4)

[V T ... *lowing Parganas* ... *Raja in the Benares District*]—Rep by Act XIV of 1881, s. 14

VI The tract of country known as Jaunsar Bawar in the Dehra Dun District

PART V.

SCHEDULED DISTRICTS, PUNJAB

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul and Spiti

PART IV

SCHEDULED DISTRICTS, CENTRAL PROVINCES

Chattisgarh Zamindaries

1. Khariar
2. Bindra Nawagarh
3. Sahezpur
4. Gandai
5. Silheti
6. Barbaspur
7. Thakurtola
8. Lohara
9. Gondardehi
10. Fingeswar
11. Pandaria
12. Pendra
13. Matin
14. Uprora
15. Kenda
16. Lapha
17. Chhuri
18. Korba
19. Chapa
20. Bora Sambhar
21. Phuljhar
22. Kolabira
23. Rampur

Chanda Zamindaries

1. Ahiri
2. Ambagarh Chauki
3. Aundhi
4. Dhanora
5. Dudhmala
6. Gewarda
7. Jharapapra.
8. Khutgaon
9. Koracha
10. Kotgal.
11. Muramgaon
12. Panabaras
13. Palasgarh
14. Rangi
15. Sirsundi
16. Sonsari
17. Chandala
18. Gilgoan
19. Pawi Mutanda
20. Pategaon

Chhindwara Jagirdaris

1. Harai
2. Chhater
3. Gorakhghat
4. Gorpani
5. Bakhtagarh
6. Bardagarh

7. Panchmarhi
8. Partabgarh
9. Almod
10. Sonpur
11. Barian Pagara

PART VII

The Chief Commissionership of Coorg

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands

PART IX.

The Chief Commissionership of Ajmer and Merwara

PART X

The Chief Commissionership of Assam

PART XI

The Hill Tracts of Arakan

PART XII.

The Parganas of Manpur.

PART XIII

(The Cantonment of Morar)—Rep by the Repealing and Amending Act, 1891 (XII of 1891)

SEVENTH SCHEDULE (Repealed)

THE LEGAL PRACTITIONERS ACT, 1846 *

ACT NO 1 OF 1946.

RECEIVED THE GOVERNOR-GENERAL'S ASSENT ON THE 7TH JANUARY, 1846

An Act for amending the Law regarding appointment and remuneration of Pleaders in the Courts of the East India Company

1, 2 & 3 [Repeal of enactments]—*Rep by Act XVI of 1874*

Office of pleader open to persons duly certificated

4 † The office of pleader in the Courts of the East India Company shall be open to all persons of whatever nation or religion Provided that no person shall be admitted a pleader in any of those Courts unless ... licensed by the Sadar for the office, any law

Right of barrister to plead in all Courts

5 Provided † that every barrister of any of Her Majesty s Courts of Justice in India shall be entitled as such *to plead in* any of the Sadr Courts of the East India Company, *subject* however to all the rules in force in the said Sadr Courts applicable to pleaders whether relating to the language in which the Court is to be addressed or to any other matter

Enactment to cease to have force, except for specified purposes

6 † Section 52, Regulation II, 1827, of the Bombay Code, shall cease to be enforced, excepting for the *purpose specified* in section 7 of this Act

Private agreement between parties and pleaders

7 † Parties employing authorized pleaders in the said Courts shall be at liberty to settle with them *by* private agreement the remuneration to be paid for their professional services, and† it shall not be necessary to specify such agreement in the *Vakalatnama*;

* This short title has been given by Act 14 of 1897
† Certain words were repealed by Act XVI of 1874

Provided that when costs are awarded to a party in any regular suit, original or appeal decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in the section of the Regulation specified in section 6 of this Act and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one fourth of what it would have been in a regular suit decided on its merits

Calculation of pleaders fees out of costs awarded in regular suits

In other cases

8 * Private agreements between parties and their pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit

Enforcement of private agreement

9.* Persons taking * opinions from authorized pleader shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions

Remuneration for opinions

10 * Whenever a pleader has rendered himself liable to a fine in the Court of a Principal Sadr Amin or Sadr Amin it, shall be competent to such Principal Sadr Amin or Sadr Amin to impose such fines Provided that an appeal from all orders imposing such fines shall lie to the Zilla or City Judge whose decision thereon shall be final

Power of Sadr Amin to fine pleader

Appeal

11 * The rules applicable to pleaders in the Courts of the Zila and City Judges shall henceforth be applicable, so far as they are capable of application, to pleaders in the Munsif's Courts

Rules applied

12 * Whenever a pleader has conducted himself in such a manner in the Court of a Munsif as would have rendered him liable to a fine if he had so conducted himself in the Court of a Zilla or City Judge it shall be competent to such Munsif to impose such fine Provided that an appeal from all orders imposing such fine shall lie to the Zilla or City Judge whose decision thereon shall be final

Power of Munsif to fine pleader

Appeal

13 * Nothing in this Act contained shall apply to vakils who may be employed in the Courts of the Village Munsifs or before the *Village or District Panchayats*, or before the Collectors of Zillas under the provisions of Regulations IV, V, VII and XII 1816, of the Madras Code

Act not to affect certain vakils

THE LEGAL PRACTITIONERS ACT, 1853

ACT NO XX OF 1853.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 8TH DECEMBER, 1853

An Act to amend the Law relating to pleaders in the Courts of the East India Company

WHEREAS it is expedient to amend the law relating to pleaders in the Courts of the East India Company It is enacted as follows —

1 [Repeal of enactments]—[*Rep by Act VIII of 1870*]

*Certain words were repealed by Act XVI of 1874

2 No pleader shall be bound to attend in any of the Courts of the East India Company, on any day fixed for the transaction of civil business or to reply to the Court his inability to attend unless he shall be employed in some cause or business which according to the practice of the Court may be heard or transacted therein on that day, anything in any law or regulation to the contrary notwithstanding

Pleaders not bound to attend Court except at hearing of cases in which employed

3 Every attorney on the roll of any of Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules for the time being in force in the said Sadr Courts respectively applicable to barristers pleading therein, whether relating to the language in which the Court is to be addressed or to any other matter

Right of Supreme Court attorneys to plead in all Sadr Courts

4 That part of section 4 Act No I of 1846 which provides that no person shall be admitted a pleader in any of the Courts of the East India Company, unless he has obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, shall not extend to barristers or attorneys of any of the Supreme Courts but every such barrister and attorney shall be entitled as such to plead in any of the Courts of the East India Company subordinate to the Sadr Courts subject to all the rules in force in the said subordinate Courts respectively applicable to pleaders therein, so far as such rules relate to the language in which the Court is to be addressed or to any other matter connected with pleadings therein

Barristers and attorneys of Supreme Courts not required to produce certificate of character etc but may plead in all subordinate Courts

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THE LEGAL PRACTITIONERS ACT 1879

ACT NO XVIII OF 1979

RECEIVED THE G G's ASSENT ON THE 29TH OCTOBER, 1879

An Act consolidate and amend the law relating to Legal Practitioners

WHEREAS it is expedient to consolidate and amend the law relating to legal practitioners in the Lower Provinces of Bengal the North Western Provinces the Punjab Oudh, the *Central Provinces* and Assam, and to empower each of the Local Governments of the rest of *British India* to extend to the territories administered by it such portions of *this Act as such* Government may think fit, It is hereby enacted as follows :—

Preamble

Notes.—Proceedings under the Act are *quasi* criminal and are barred by acquittal in previous criminal proceedings 85 Ind Cas 279=29 Cr L J 1111=A I R 1925 Rang 330 The Legal Practitioners Act make no provisions either for transfer of proceeding or for the holding of a preliminary enquiry 92 Ind Cas 896=1925 M W N 466=A I R 1926 Mad 1044

CHAPTER I

PRELIMINARY

Short title, commencement.

1 This Act may be called the Legal Practitioners Act, 1879, and shall come into force on the first day of January 1880

Local extent.

This section and section 2 extend to the whole of British India

The rest of this Act extends in the first instance, only to the territories respectively administered by the Lieutenant Governors of the Lower Provinces

of Bengal, the North Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces and Assam But any other Local Government may from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration

Repeal of enactment

2 On and from the first day of January, 1880, the enactments mentioned in the first Schedule hereto annexed shall be repealed to the extent specified therein

Saving of rules &c

All rules and appointments made, penalties prescribed, fees fixed persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act

References to repealed enactments

All references made to any enactment hereby repealed in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act

Interpretation clause

3 In this Act, unless there be something repugnant in the subject or context,—

"Judge"

"Judge" means the presiding judicial officer in every Civil and Criminal Court *by whatever title he is designated*

'Subordinate Court

"Subordinate Court means all Courts subordinate to the High Courts, including Courts of Small Causes established under Act No IX of 1850 * Act No XI of 1865 . †

'Re venue office

"Revenue office includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents

'Legal practitioner"

"Legal practitioner' means an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue agent

‡ "tout" means a person—

(*a*) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business, or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them the employment of the legal practitioner in such business, or

(*b*) who for the purposes of such procurement frequents the precints of Civil or Criminal Courts or of revenue offices or railway stations, landing stages, lodging places or other places of public resort

Tout —Looking after other *people's cases and writing petitions for them cannot* by themselves make a person a tout within the definition of this section It must be proved that he procured the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner before he can be declared a tout 62 Ind Cas 829 A person to be a tout must have been paid or proposed to be paid for bringing him a client 6 Pat 567=102 Ind Cas 340=A I R 1927 Pat 282 Order declaring a person to be tout when he is not proved to be so is illegal A I R 1930 Lah 405=31 P L R 212=127 Ind Cas 362 If a man attends Court every day looks after the case of clients, even pays to pleader and realises costs and engages pleaders and also realises

* See now the Presidency Small Cause Court Act (XV of 1882)

† See now the Provincial Small Cause Courts Act (IX of of 1887)

‡ Substituted by Act XV of 19 6

their fees he is not rendering gratuitous service and consideration may be presumed. A I R 1929 Cal. 196=56 C 800

Legal Practitioner—Under the otherwise qualified was not entitled t C L J 282=21 C W N 75 (F B) by Act 23 of 1923 whereby no woman is

CHAPTER II

OF ADVOCATES, VAKILS AND ATTORNEYS

4 Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the Letters Patent constituting such Court, or "under section 41 of this Act,"* "or enrolled as a pleader in the Chief Court of the Punjab under

Advocates and vakils.

led to practise in all the Courts sub- of which he is entered and in all revenue- the appellate jurisdiction of such Court orce relating to the language in which the Court or office is to be addressed by pleaders or revenue agents; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission t of which the Indian Bar under that Act ‡ in any revenue office:

Provided that no such vakil "or pleader"† shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency town

Vakil—There is of Vakil on original "practice" in this sec Vakils have no right of Madras 48 M is not intended to override the special provisions relating to insolvency in the Presidency towns 48 M 331 The words 'under this section in the proviso to s 34 apply to the whole section 37 Ind Cas 699=31 M L J 598=(1916) 2 M W. N 519

5 Every person now or hereafter entered

Attorneys of High Court

High C Courts revenue offices situate within the l such High Court, and every person Court on the roll of which he is so shall in Ch be entitled as such to practise Court established by Royal in any revenue office Attorney practises under this sec may, from time, to time, make rules declaring what shall be deemed to be the functions, powers and duties of an Attorney so practising

Notes—Where a client instructs his attorney not to engage a particular counsel, the client is not bound to pay his fees A I R 1930 Cal 651=52 C L J 197

* Substituted by Legal Practitioners Act (IX of 1884) s 2
† Added by Act 1 of 1908
‡ Substituted by Act 38 of 1926

CHAPTER III

OF PLEADERS AND MUKHTARS

Power to make rules as to qualifications, &c, of pleaders and Mukhtars

6 The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely) —

(a) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts and of the revenue offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter "in respect of which the Indian Bar Councils Act, 1926, is not in force' * of such Court,

(b) the qualifications, admission and certificates of proper persons to be mukhtars of the subordinate Courts and, in the case of a High Court not established by Royal Charter 'in respect of which the Indian Bar Councils Act, 1926, is not in force''* of such Court,

(c) the fees to be paid for the examination and admission of such person and

(d) suspension and dismissal of such pleaders and mukhtars.

Publication of rules

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law

Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government

Notes —The word proper implies that apart from educational and other qualifications that may be insisted on there may be other conditions laid down in order to entitle a person to be admitted as a pleader and the expression 'to be denotes that his continuance as a pleader may be made dependent on such conditions 40 C W N 377

Certificates to pleaders and mukhtars

7 On the admission, under section 6, of any person as a pleader or mukhtar, the High Court shall cause a certificate, signed by such officer as the Court, from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts, and, in the case of a pleader, also the revenue offices specified therein

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time be made by the High Court in this behalf be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time appoints in this behalf

On every such renewal the certificate then in possession of such pleader or mukhtar shall be cancelled and retained by such Judge or officer

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court

Provided that on the admission as a pleader of any person who has been previously entered as a vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorising him to practise permanently in the Courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section ' †

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* Inserted by Act 38 of 1926 † Added by Act 1 of 1908.

Notes—An application for renewal of certificate must be treated as an application for admission where the Court has to see whether the applicant is a proper person to be an officer of the Court and to be trusted with the interest of suitors 11 P 365=A I R 1931 Pat 369=12 P L T 773 (F B) Under R 13 High Court has not delegated to District Judges power to suspend practitioners pending receipt of their renewal certificates 133 Ind Cas 522=54 M 574=60 M L J 588=A I R 1931 Mad 688

Pleaders on enrolment may practise in Courts and revenue offices

8 Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted, and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly, and thereupon he may appear plead and act in such Court or office and in any Court or Revenue-office subordinate thereto

Appellate Jurisdiction—The words 'appellate jurisdiction as used in this section denote the ordinary as distinguished from the extraordinary appellate jurisdiction of the Court 24A 318 (F B)

Mukhtars on enrolment may practise in Courts

9 Every mukhtar holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits, and subject to such rules as the High Court may from time to time make in this behalf the presiding Judge shall enrol him accordingly, and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of the Criminal Procedure,*) appear, plead and act in such Criminal Court and any Court subordinate thereto

Mukhtar—A mukhtar holding a mukhtarnama authorising him to act in a case may perform any act which a Mukhtar may do in the course of a case 1 C W N 11 A written statement as also plaint may be presented or tendered by a Mukhtar but neither can be signed by him 16 C L J 578 The looking after a regular appeal and the giving instructions to pleaders in connection with it would not necessarily amount to practising as a Mukhtar under s 13 10 W R 355, 9 B L R App 18=18 W R C Rul 27, 19 W R Cr 8, 6 C 585=7 C L R 562 When a person practising as a Mukhtar stand surety for a person such as Tehsi'dar, he does not do so in his professional capacity, he does so in his private capacity 7 C W N 281 Fraud apart loan to a pardanashin woman from her own mukhtar y be n[illegible] ample [illegible] ... Commissioner of Kumaun Court of the Commissioner A W N 1892, 236

No person to practise as a pleader or mukhtar unless qualified

10 Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtar in any Court not established by Royal Charter unless he holds a certificate issued under section 7, and has been enrolled in such Court or in some Court to which it is subordinate

Revenue agents may appear plead and act in Munsifs Courts in suits under the Bengal Act VII of 1869

Provided that persons who have been admitted as revenue agents before the first day of January 1880, and hold certificates as such under this Act in the territories administered by the Lieutenant Governor of Bengal may be enrolled in manner provided by section 9 in any Munsif's Court in the said

* See now the Code of Criminal Procedure (Act V of 1898)

territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869 (*to amend the Procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents

Notes—Acceptance of vakalatnama need not be in writing 5 C W N 816 *prima facie* evidence that it proceeds is power given in the vakalatnama a necessary 3 C L R 13 An admission W N 222, 27 C 156 (P C) It is the pleader s duty to make themselves acquainted with the orders passed in Court 27 C 529=4 C W N 237 Where a pleader was appointed a Subordinate judge, he is not bound to engage another pleader to conduct the case in which he was previously appointed 23 B 957 Service of notice on pleader is good service even if he refuses to accept the same 7 O C 303

Appointment of Pleaders—Muktars could appoint pleaders on behalf of their principals 7 W R 481 The acceptance of vakalatnama in the High Courts be by party or his recog ginal suit has authority to h vakalatnama 20 B 198 her pleader 20 B 293 But High Court may make a rule authorising legal practitioners in certain cases to ear in their place 9 A ismissal without miscon to take sides against his carry with him that can 5, 12 B 85 L B R, (1893 1900), 18

Authority of pleader to bind a client by statement—In matters relating *to the conduct of a suit a pleader can act on behalf of his client even without express* authority 3 Bom L R 467 Admission by a vakil binds his client 9 W R 485, 2 M I A 253, 9 W R 375 But the opinion expressed by a vakil in the course to advocate, is not binding on 24 B 360 16 W R 216, compromising a case on behalf end 5 Bom L R 798, 6 C W N 82, 2 Agra 222 21 M 274

A vakil can withdraw a suit by virtue of his vakalatnama 5 W R 80

Power to declare functions of Mukhtars

11 Notwithstanding anything contained in the Code of Civil Procedure,* the High Court may, from time to time, make rules declaring what shall be deemed to be the functions powers and duties of mukhtars practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court

Suspention and dismissal of pleaders and mukhtars convicted of criminal offence

12 The High Court may suspend or dismiss any pleader or mukhtar holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or a mukhtar, as the case may be

Notes—If a complaint is made against a legal practitioner that he has committed an offence it is a matter which should be tried before a Criminal Court and not by proceedings under the *Legal Practitioners Act If he is convicted by the former,* then disciplinary action can be taken 76 Ind Cas 875=25 Cr L J 265 A con a defect of of suspen 38 Convic nt to show ang 352=

* See now the Code of Civil Procedure V of 1908

1929 Cr C 608 Conviction for criminal offence is sufficient for proceeding under s 12 A I R 1929 Cal 771=33 C W N 829 But conviction should show the convict to be unfit to be a pleader for application of s 12 A I R 1931 Nag 33=27 N L R 29=130 Ind Cas 826, 131 Ind Cas 67=A I R 1931 Oudh 161=8 O W N 257 As regards meaning of defect of character, *vide* A I R 1933 Cal 731, 145 Ind Cas 316, A I R 1931 Pat 369 Punishment for contempt of Court committed by pleader personally is no bar for professional punishment 145 Ind Cas 847=1933 A L J 251=55 A 148=A I R 1933 All 224 Inquiry into professional misconduct without grave and reasonable cause is not proper 1931 A L J 678=136 Ind Cas 287=33 Cr L J 260=A I R 1931 All 580 (S B) Disciplinary action is justified for conviction for political offences 38 C W N 376; see also A I R 1934 Cal 242=148 Ind Cas 57, A I R 1934 Cal 808=59 C L J 410=152 Ind Cas 943

Suspension and dismissal of Pleaders and Mukhtars guilty of unprofessional conduct

13* The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtar holding a certificate as aforesaid—

(*a*) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such ... of Civil Procedure, or some servant, ... to give such instructions, or

... grossly improper conduct in the discharge of his professional duty, or

(*c*) who tenders gives or consents to the retention, out of any fee paid or payable to him for his services of any gratification for procuring or having procured the employment in any legal business, of himself or any other pleader or mukhtar, or

(*d*) who ... ment of ... any person ... been given by him, or agreed or promised to be so given, or

(*e*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(*f*) for any other reasonable cause

Provided that where the party is—

(*a*) a pardanashin woman, or

(*b*) unable for any sufficient cause to instruct the pleader in person,

nothing in this section shall make a pleader liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorized by the party to give such instructions and not receiving any remuneration in respect thereof

Object—The object of this Act was not to control the privileges which had always existed in the pleaders or to restrict in any way the powers which they had ... or mukhtars for the purposes ... they might be kept in order ... ple by extortion 15 C 638 ... but there must be definite retainer ... fee paid or confiden... 136=1932 A L J 755 ... ng casual information ... rohibit a pleader from ... from a person who is ... king instructions from ... ce under this section ... was consulted by the complainant at a certain stage of the criminal proceedings ... 442 20 C W N 283 Where a pleader and he appeared for some of the persons accused at a later stage of proceedings in connection with a totally different incident, he is not liable for an offence under clause (*a*) 8 Lah 671

* This section has been substituted by the Legal Practitioners Act (XI of 1896), s 2

Clause (b)—Muktar's writing an objectionable letter to the presiding officer of a Court comes within the provisions of this clause 166 P L R 1901, 9 P R 1902 The conduct of a pleader in acting for both sides in the case is grossly improper 45 Ind Cas 390 Accepting the vakalatnama and without execuse not fulfilling the duty falls under the section 49 C 732 Where after the dismissal of a bail applica tion by a Sessions Judge, the said pleader put in another application before the

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Clause (c)—The *Munshiana* (clerk s fee) does not mean the fee paid or pay able to a pleader for his services within the term of th s clause Paying wholly or in part *Munshiana* to a person who introduces a client to a pleader is not objection able under this clause provided it is not done in pursuance of any previous arrange ments between that person and the pleader, for the procuring by the former of cl ents for the latter 22 P W R 1910 Cr (F B) The test to find out whether the con duct of a pleader falls within the Act is to consider whether the misconduct is of such a description as shows him to be an unfit or unsafe person to enjoy the privi

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asking the latter to send up cases to him and agreeing to share the fees, renders

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the rest and is exhaustive of its own genus and where th s is so, the principle of *ejusdem generis* can hardly apply The words other reasonable cause cover mis conduct other than professional misconduct and embraces all causes other than

be regarded as
7 B L R 179,
W N 556; 20
8 M L J 230

Cases of moral tu p tude unconnected with the discharge by a legal prac itioner of his professional duty may come within the express on ' any o her reasonable cause yet in the absence of definite rules to that effec , e gageme it in trade or business or other occupation however derogatory to the dignity of the profession or detrimental to the due discharge of the duties of a legal practitioner, would come within the expression 40 C W N 380 Where Advocate as party makes imputations upon fairness or impartiality of Judge action cannot be taken under d sciplinary jurisd c tion A I R 193? All 49? (S B)=54A 912=1932 A L J 773=14? Ind Cas 564 Where Bar Association resolved to boycott one of their members for taking brief against another member in contravention of previous resolution proposer and seconder of resolution held to be guilty of misconduct and suspended from practice for one month A I R 193? Cal 370=33 Cr L J 465=59 C 709=36 C W N 294=54 C L J 530 Boycott of Court on particular day, even with consent of clients is professional misconduct 132 Ind Cas 900=35 C W N 223=A I R 1931 Cal 706 Adv sing his clerk to share property in dispute by advancing money for litigation and appearing free for litigants amounts to professional mis conduct A I R 1932 Lah 584=34 P L R 445=142 Ind Cas 689 Pleader committing isolated act which assists operation of unlawful association is not necessarily improper person A I R 1933 Lah 577 (S B)=14 Lah 532=1933 Cr C 846=143 Ind Cas 737 Practitioner asking adjournments to move High Court merely to delay course of justice and taking no steps is guilty of improper conduct. 60

M L J 393=32 Cr L J 657=54 M 520=A I R 1931 Mad 422 (F B) High Court must consider whether conviction necessitates disciplinary action A I R 1933 Nag 383=15 N L J 90 Non filing vakalatnama in criminal case was held to be no *professional misconduct* A I R 1933 Pat 571 (S B)=1933 Cr C 1017 Mortgage at Rs 3 per month at monthly rest for securing fees amounts to professional misconduct 145 Ind Cas 1017=A I R 1933 Pat 571 (S B) Where judgment of trial Court is retained by pleader with intention of being engaged in appeal, advocate is guilty of professional misconduct *Ibid* Where pleader's conduct is very impertinent, serious notice of the same should be taken 142 Ind Cas 828=34 C L J 466=A I R 1933 Rang 34 Enquiry under this section is of quasi criminal character and disciplinary action against pleader is not by way of punishment 1933 Cr C 207=A I R 1933 Sind 65 Where a pleader comes to Court in ... pleader 12 Rang 180=150 Ind Cas ... be removed from the roll for ...)=15 P L T 63=35 Cr L J 453 ... professional capacity suit against ... and others with allegations of ... ted in doing so in *bona fide* spirit ... 152 Ind Cas 313 ... awyers should not blindly follow clients instruction in imputing dishonesty, criminality, etc against a person in his notice A I R 1934 Pat (S B) see also 61 C 522=A I R 1934 Cal 723 It is misconduct on the part of a legal practitioner to stipulate with his client to share in the result of the litigation 141 P L R 1904 A pleader can take side against his former client after close of business and after discharge without any misconduct of his part 45 P L R 1904 Writing anonymous letter to officer ... falls within this clause 26 M 448 A *legal* ... be under a pecuniary liability to his client, ... less amount than that for which he is ... conduct in the discharge of his professional duty 5 A L J 126 Pleader who after drawing money from the Court does not pay it to his client commits glossly improper conduct 31 C 43=7 C W N 373 Where an advocate was found guilty having committed gross perjury and where the course of his conduct displayed great moral turpitude in having instituted a false case and having supported it by false statements, he is unfit to *remain as an* Advocate any ... vakalatnamas without *making proper* ... *on the part of a* pleader 18 In ... before a Court is misconduct und ... muktear acting as go between for ... 21 C W N 516

... in Court is guilty of profes... practitioner who writes a ... particular manner is guilty of grossly improper conduct within this clause 3 P W R Cr 1918 A muktear can be proceeded against under this clause for writing ... Ind Cas 798 Where a pleader ... s, he does not commit ... eported in 24 C W N ... movement to boycott ... of a course of conduct ... L J 403 This clause ...

... of a pleader to examine records or verify statements made by his client is not grossly improper con... W R ...

... 1911, 10... The Privy Council will not interfere unless it is clearly shown that

the *quantum* of punishment is unreasonable and excessive 13 A 93 Examining copies of record only before certifying is not grossly improper conduct 17 W R. 338 For instances of improper conduct *vide*, W R Miss 5 ; 25 W R 366 ; 12 B 78, 7 C W N 797 ; 6 M L T. 329 ; 109 P W R 1910 ; 6 W R 67 ; W. R. 1864 Miss 22 ; 33 B, 252 ; 26 B 423, 12 C L J 625, 23 M L J 114 (P C), 14 C. W. N.

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and nor simply enquired into as improper conduct Dismissal of a pleader after acquittal is improper 24 W R Mis 22 Suspension of pleader before enquiry is also improper 24 M 83 The enquiry under the disciplinary jurisdiction of the High Court being of a *quasi*-criminal character, the Court must have strict proof of the professional misconduct alleged against a pleader 11 Bom L R 1150 Throwing up brief, with the assent of client in pursuance of a resolution of boycotting the Court, is not professional misconduct. 25 Cr L J 1352=82 Ind Cas 712 When the majority of the pleaders are absent from Court on a certain day, no individual pleader can be held liable for misconduct under s 13 (f) when it was not proved that he was engaged in some case fixed for that date, not positively establish-

to join in a boycott of the Court. 35 C.

10 withdraws from Court money belonging

of the client without being authorized

uilty of professional misconduct within the

meaning of s 13 77 Ind Cas 181=25 Cr L J 325=1925 All 146 While the Court will not interfere with or have regard to any man's political opinions or opinions on public questions it is impossible to allow a person who proclaims or practises what is called the doctrine of "civil disobedience" to ask to be part of the machinery of the Courts which exist for the very purpose of the thwarting of the civil disobedience and the enforcement of civil obedience 1924 Mad 479, 69 Ind Cas 209=1923 Cal 212 A pleader who employs himself as a professor without

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taxes, boycott of Courts, etc, and does not express regret for his action, a case is made out for taking action under the Act, and to withhold the renewal of his *sanad* 45 M. L J 684=33 M L T 98 H C Taking fees as pleader in the costs where the pleader is in fact the party is grossly improper conduct 1924 Oudh

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Withdrawal of money on behalf

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R 1925 Cal 146 Pleader

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B)=A I R 1929 Pat 153=10 P L T. 664 Claiming heavy fees does not in itself amount to misconduct unless fraudulent conduct on the part of pleader is proved 34 C W N 534=1930 A L J 539=123 Ind Cas 184 (P C) A false identifying by a mukhtar amounts to grave misconduct 126 Ind Cas 909=A I R 1930 Pat 495 Charge of misconduct must be clearly proved 34 C W N 534 P C ; A I R 1930 Lah 947 As regards effect of joining Civil Disobedience movement *vide* A I R 1931 Pat. 369 (F B), 27 N L R 29=A I R 1931 Nag 33

gnores the language of the fee certificate

Where a pleader sets up a false plea of *alibi* in a case against him he cannot be brought within the disciplinary jurisdiction of the Court 20 M. L J 498 False allegations against a Judge is professional misconduct 8 M L T 375 (F. B) In a case of conviction, the propriety in law or in fact of the conviction could not be questioned in such proceedings, but he was not precluded from showing, if he could ... to render him an unfit person to be ... he Court has a discre- ... nature of the offence ... because he has been convicted 22 A 49 (F B) see also 7 A 290 (F B), 10 A 174 (F B) It is incumbent on counsels to see that their clients are properly represented when their case is called on for hearing If a counsel is unable to appear himself he should arrange for another counsel to take the brief for him 68 Ind Cas 785, see also 67 Ind Cas 554, 49 C 731=26 C W N 589 The proceedings relating to enrolment of pleaders are purely administrative and not judicial 64 Ind Cas 636 Altering a deed materially after its execution with a view to avoid paying penalty as required by the stamp law is misconduct, 13 N L T 107 (P C)

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue office

14 If any such pleader or mukhtar practising in any subordinate Court or in any revenue office, is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day ... into consideration. ... pleader or mukhtar at least

On such day or on any subsequent day to which the enquiry may be adjourned the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtar, and shall proceed to adjudicate on the charge

If such officer finds the charge established and considers that the pleader or mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court, and the High Court may acquit, suspend or dismiss the pleader or mukhtar

Suspension pending investigation

Any District Judge, or with his sanction any Judge subordinate to him "any Judge of a Court of Small Causes of a Presidency town," * any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue authority not inferior to a Collector, or with the Collector's sanction any revenue Officer subordinate to him, may, pending ... ractice any

... Judge, be made through such Judge,

(*b*) when made by a Magistrate subordinate to the Magistrate of the district, † be made through the Magistrate of the district† and the Sessions Judge,

(*c*) when made by the Magistrate of the district, † be made through the Sessions Judge,

(*d*) when made by any Revenue-Officer subordinate to the Chief Controlling Revenue authority, be made through such Revenue authorities as the Chief Controlling Revenue authority may, from time to time, direct

* The words quoted have been inserted by the Legal Practitioners Act (IX of 1884), s 4

† To be read as District Magistrate—*See* the Code of Criminal Procedure (Act V of 1898), s 3(2)

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue authority through whom or which it is made

Objects—This section is provided for the purposes of giving the High Court the benefit of the District Judge's opinion and also as an additional protection to

of Courts and the proper and honest administrations of the law Fair notice and opportunity to be heard must be given 35 C L J 356=49 C 732 This section empowers any Court in which a pleader practise it consider a charge of misconduct made against him in such Court and the section does not limit the consideration of a charge to the Court in which the misconduct is alleged to have been committed consequently it is open to the District Judge to institute proceeding under the Act against a pleader in respect of his misconduct in a subordinate Court 49 C 850=67 Ind Cas 995, but see 57 Ind Cas 277 There is no provision in the Legal Practitioner's Act conferring a right of appeal to His Majesty in Council from an *order passed by the High Court under s 13 The right of appeal is given in cases of* order passed under Clauses 9 to 27 of the Letters Patent 4 Pat L J 423=52 Ind Cas 599 The mukhtars must take instruction directly from the client or his agent 2 Pat L J 36 A District Judge has no power to award costs in a matter referred by him to the High Court The High Court alone has the power to give directions as the award of costs incurred between the date of the petition and the date of reference to the High Court 26 Ind Cas 125 The enquiry under this Act cannot be delegated or transferred to another officer who is not the presiding officer of the Court in which the malpractices complained of were committed 1 Pat L J 576 The Code of Civil Procedure is not applicable to a proceeding under this Act *Ibid* A District Judge cannot suspend a pleader without proceeding against him under s 14 14 A L J 82 Reference or report to the High Court, under this section by the Divisional Commissioner who is not a revenue agent is *ultra vires* 19 C L J 110 The expression 'such Court" in the first clause of this section cannot be construed to mean the Court in which ... mitted 72 Ind Cas 52=24 Cr L J

have been committed by a mukhtar Judge of the District has no juris 3) P 45=71 Ind Cas 703 A Court acting under this section is not restricted in ordering an enquiry to offences mentioned under clauses (a) and (b) of this section (1923) Pat 379 Altering survey number in petition after filing it in Court and that obtaining the leave of the ... 82 Ind Cas 843 The proceedings under this

eding though being penal 93 Ind Cas 700=27 Cr the charge to the Court in 1926 M W N 466=92 ay take evidence before framing a charge against the pleader, but the witnesses should be examined in ... C W N 554 S 14 is material even in proceedings L J 595=A I R 1933 Cal 344 or casting imputations on integrity 595=A I R 1933 Cal 344 Asking r conclusion of case is misconduct 1932 Pat 356 (S B) In referring case under s 14 recommending officer need not suggest as to what punishment should be awarded That matter entirely rests with High Court A I R 1932 Cal 370=36 C W N 294=54 C L J 530=137 Ind Cas 434 Standard of honour of mukhtar is same as that of vakil or barrister Where a person breaks rules fabricates documents gives untrue defence and implicates falsely other persons he is not fit to be a mukhtar 140 Ind Cas 107=33 Cr L J 874=33 Cr L J 874=A I R 1932 Pat 289 (S B) Where suspended pleader is again convicted, removal from rolls is justified without notice under s 14 for appearance A I R 1932 Pat 300 (S B)=34 Cr L J 8=140 Ind Cas 295 But in order to take action under this section the charge of misconduct against a pleader must be proved beyond reasonable doubt 59 C L J 419=A I R 1934 Cal 794=152 Ind Cas 43 A pleader who after taking instructions from one party engages

censure 15 P L T 305=150
the allegation is that a legal
e proper procedure is to proceed
t him under this section before
W N 87=149 Ind Cas 874

Where names are added in the vakalatnama after execution such additions are
although improper yet it is not gross
motives 17 C W N 328 False adr
under this section 16 C L J 224
jurisdiction even though the alleged
trial Court where the occurrence has t
has no power to refer it It would be necessary however that the High Court should make an enquiry (1922) P 608 It is the duty of pleaders to strictly observe the rules relating to the accepiance of vakalatnamas where a pleader through a *bonafide* mistake accepted a vakalatnama believing it to have been executed by the executant
... explan ... to be careful in future the
d not be started afresh
direct connection with the
to the Court but it is
law 47 C 114 A legal
practitioner who identifies a person whom he does not know is guilty of professional misconduct 57 Ind Cas 818 The fact that the pleader concerned had become a vakil of the new High Court at Lahore since the action was taken under s 14 by the lower Court could not affect the jurisdiction of that Court 152 P R 1919

Power to call for record in case of acquittal under section 14

15 The High Court, in any case in which a pleader or mukhtar has been acquitted under section 14 otherwise than by an order of the High Court may call for the record and pass such order thereon as it thinks fit

Power to make rules for mukhtars on appellate side of High Court

16 Notwithstanding anything contained in any letters patent or in the Code of Civil Procedure section 37 clause (*a*), any High Court established by Royal Charter may, from time to time make rules consistent with this Act as to the following matters, (namely) —

(*a*) the qualifications and admission of proper persons to be mukhtars

n and admission of such persons,
ured to give for their honesty and
good conduct,

(*d*) the suspension and dismissal of such mukhtars, and

(*e*) declaring what shall be deemed to be their functions powers and duties,

and may prescribe and impose fines for the ...
exceeding in any case five hundred rupees, a
be recovered as if they had been imposed
ordinary original criminal jurisdiction

CHAPTER IV

Of Revenue-Agents

Power to make rules as to qualifications &c, of Revenue-agents

17 The Chief Controlling Revenue-authority may, from time to time make rules consistent with this Act as to the following matters (namely) —

(*a*) the qualifications admission and certificates of proper persons to be revenue agents

(*b*) the fees to be paid for the examination and admission of such persons ;

(*c*) the suspension and dismissal of such revenue agents ; and

(*d*) declaring what shall be deemed to be their functions, powers and duties.

Publication of rules

All such rules shall be published in local official Gazette, and shall thereupon have the force of law

Certificates to revenue-agents

18 On the admission of any person as 17, the Chief shall cause a ce as such Authority from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue offices as may be specified therein

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue authority, or by any other officer authorized by such authority in that behalf

On every such renewal, the certificate then in the possession of such revenue agent shall be cancelled and retained by such Secretary or other officer

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue authority.

Enrolment of revenue agent

19 Every revenue agent holding a certificate issued under section 18 may apply to be enrolled in any revenue offices mentioned therein and situate within the limit of the territory under the Chief Controlling Revenue authority , and subject to such rules as the Chief Controlling Revenue authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue agent in such office and in any revenue office subordinate thereto

No person to act as agent in revenue offices unless qualified

20 Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue agent in any revenue office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue office

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same

Dismissal of revenue agent convicted of criminal offence

21 The Chief Controlling Revenue authority may suspend or dismiss any revenue agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent

Suspension and dismissal of Revenue agents guilty of un professional conduct

*22 The Chief Controlling Revenue autho rity may also, after such enquiry as it thinks fit, suspend or dismiss any revenue agent holding a certificate as aforesaid—

(a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(b) who tenders gives or consents to the retention, out of any fee paid or payable to him for his services of any gratification for procuring or having procured the employment in any legal business of himself or any other revenue agent, or

(c) who, directly or indirectly, procures or attempts to procure the employ ment of himself as such revenue agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(d) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(e) for any other reasonable cause

Procedure when revenue agent is so charged in subor dinate office

23 If any revenue agent holding a certificate issued under this Act is charged with any such conduct in any office sub ordinate to the Chief Controlling Revenue autho rity, or in the Court of any Munsif, the officer at the head of such office or such Munsif as the ... t, on a ... 1 ... fifteen days before the day so appointed On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge or by the person charged, and shall proceed to adjudicate on the charge

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof and report the same to the Chief Controlling Revenue authority, and such Authority shall proceed to acquit, suspend or dismiss him

Any Revenue officer not inferior to a Collector, and with the Collector's sanction any Revenue officer subordinate to him or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue authority, suspend from practice any revenue agent charged before him under this section

Where any officer acting under this section is subordinate to the Commis sioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case

Power to Chief Controlling Revenue authority to call for record

24 The Chief Controlling Revenue authormity, in any case in which a Revenne agent has been acquitted under section 23 otherwise than by an order of the Chief Con trolling Revenue authority, may call for the record and pass such order thereon as seems fit

CHAPTER V

OF CERTIFICATES

Fee for certificates

25 Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto

* Substituted by Act XI of 1896 s 3

annexed, "and of such description as the Local Government may, from time to time, prescribe "*

Provided that a certificate issued on or after first day of July in any year may be written on stamped paper of half the value so prescribed

† Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorising, under section 7, a vakil or attorney on the roll of a High Court established by Royal Charter to practise as a pleader

Dismissed practitioners to surrender certificates

26 Where any pleader, mukhtear or revenue agent is suspended or dismissed under this Act he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended, or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue authority (as the case may be) orders him to deliver the same

CHAPTER VI

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE AGENTS

High Court and Chief Controlling Revenue authority to fix fees on civil and revenue proceedings

27 The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate pleader, vakil, mukhtar or Attorney upon all proceedings (*a*) on the appellate side of such Court (*b*) in the case of a *High Court not established by Royal Charter* ... ırts, "and in respect of the fees of ... ıg or acting under section 10 ‡ ... shall from time to time, fix and regulate the fees payable upon all proceedings in the revenue offices by any party in respect of the fees of his adversary s Advocate, Pleader, Vakil, *Attorney, Mukhtar or Revenue agent*

Tables of the fees so fixed shall be published in the local official Gazette

Exception as to agents mentioned in section 20

Nothing in this section applies to the agents mentioned in the proviso to section 20

Notes —This section has no reference to the fees payable by a party to his own advocate pleader or vakil, the payment is regulated by agreement between the parties 15 C L J 600=17 C W N 45 The rule framed under this section, which authorises the Court to allow a daily fee for every day after the first day of the final hearing assumes the probability of advocates charging a daily fee for every day after the first day of the final hearing and recognizes that such a charge would be reasonable and that the client who has to pay it should recover from his opponent what he has had to pay up to reasonable limits 33 Ind Cas 107 This section is applicable only to the fee which is to be paid to the adversary s pleader 29 Ind Cas 764 Where several professional gentlemen are retained by the same vakalatnama each of them is entitled to claim from his clie ... a share of a single fee which ma ... W N 300 ... suit itself arc ... in the categc ... no fresh pleader s fees can be allowed in the execution A I R 1933 Nag 360=144 Ind Cas 379

28 Rep by Act 21 of 1926

29 Rep by Act 21 of 1926

30. Rep by Act 21 of 1926

31 Rep by Act 21 of 1926

* In s 25 *the words quoted have been added by the* Legal Practitioners Act (IX of 1884), s 5

† The second proviso was added by Act I of 1908

‡ To s 27, the words have been added by the Legal Practitioners Act (IX of 1884), s 6

CHAPTER VII.

PENALTIES

32 Any person who practises in any Court or revenue office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorising him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months

On persons illegally practising as pleaders, mukhtars or revenue agents

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made, by him as pleader, mukhtar or revenge agent, whilst he has been contravening the provisions of either of such section

33 Any pleader, mukhtar or revenue agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment, to imprisonment in the civil jail for a term which may extend to three months

On suspended or dismissed pleader, &c, failing to deliver certificates

34 Any pleader, mukhtar or revenue agent, who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtar or revenue agent in any Court or [illegible] Court or the officer [illegible] rupees, and in defa[illegible] in the civil jail for a term which may extend to six months

On suspended or dismissed practitioner practising during suspension or after dismissal

35 Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue authority where the order has been passed by an officer subordinate to such authority

Revision of fines

36 (1) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue officer, not being below the rank of a Collector of a district, and the Chief Judge of every Presidency Small Cause Court (each as regards t[illegible]

Power to frame and publish lists of touts

[illegible] time to time, alter and amend

"*Explanation* —The passing of a resolution, declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitle to practise as legal practitioners in any Court or revenue office, shall be evidence of the general repute of such person for the purposes of this sub-section"*

(2) No person's name shall included in any such list until he shall have had an opportunity of showing cause against such [illegible]

*"(2A) Any authority emp[illegible] a list of touts may send to a[illegible] of any persons alleged or suspe[illegible] [illegible] that Court to hold

* Inserted by Act XV of 1926

an enquiry in regard to such persons, and the subordinate Court shall there upon hold an enquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in sub section (2), shall report to the authority which has ordered the enquiry the name of each such person who has been proved to the satisfaction of the Subordinate Court to be a tout, and that authority may include the name of any such person in the list of touts framed and published by that authority

Provided that such authority shall hear any such person who before his name has been so included, appears before it and desires to be heard"

(3) A copy of every such list shall be kept hung up in every Court to which the same relates

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (*e*) and section 22, clause (*d*)

*"(6) Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees or with both"

Notes—Under this section there should be legal evidence that the individual is a tout 12 M L T 259, 24 C W N 1074 The order under clause (4) is not a judicial order and is not open to revision by the High Court 12 M L T 411, 13 S L R 212, 120 P L R 1909 An order under this section can only be made by the authority mentioned in the section upon evidence recorded by itself. 24 C W N 1074, (1919) Pat 273, 16 L W 795 26 M 596 6 C W N 289, 22 P R 1904 The order is open to revision 21 A 181, 31 A 59 It is only the Judges and Officers specially mentioned in this section who can frame and publish list of touts, they can not delegate the task of making the enquiry or taking evidenc to a subordinate officer and the evidence must be adduced before the former 5 Lah 443 It has never been the intention of the Legislature to allow anything of the nature of an appeal against the decision of a competent Court under section 36 of the Act 45 A 676=21 A L J 678=75 Ind Cas 11 Where a person s name is publ shed *in a list of touts* and the list applies to Courts over which the Judge has no jurisdiction the order is bad 1923 Cal 484 In proceedings to do ... nde h s sect on s not necessar hat here sho ld be a

[illegible]

be exercised before action is taken against any body They must be given full opportunity of adducing evidence 92 Ind Cas 749=27 Cr L J 333=A I R 1926 Lah 227 A resolution or report of a sub committee of only seven members of an association of about 72 members declar ng certain persons to be touts is not a resolution by a majority of members and hence it can not be used as evidence of general repute under the explanation to sub section (1) of s 36 6 Pat 567=8 Pat L T 587 =28 Cr L J 582=102 Ind Cas 340=A I R 1927 Pat 282 The High Court has, in exceptional cases jurisdiction to interfere in revision with orders passed under this section A I R 1931 Lah 98=31 P L R 1003 Sufficient opportunity must be [illegible] A I R 1930 All 796 A [illegible] touts is merely evidence [illegible] A person s name should [illegible] it he habitually acted as tout 49 C L J 118=116 Ind Cas 173 All members need not be present at the meeting It is sufficient if the resolution is passed by the majority of the members present A I R 1929 Cal 196=56 C 800=115 Ind Cas 602 Resolution based on general repute or hear say evidence is not ineffective A I R 1931 All. 711=1932 A L J 176=54 A 230=136 Ind Cas 374 Resolution based on general repute though *of less weight is legally* admissible in evidence *ibid*, see also A I R 1932 Bom 596=56 B 577=34 Bom L R 1281=34 Cr L J 47, A I R 1931

* Sub sec. 6 was added by Act XV of 1926

All 315=130 Ind Cas 629, 28 N L R 159=A I R 1932 Nag 141=33 Cr L J 940 It is not necessary that every member present should consider evidence 28 N L R 159 Proceedings are quasi criminal and Court must see that provisions of s 36 are satisfied A I R 1932 Bom 596=34 Bom L R 1081=56 B 577 Issue of notice to persons whose name is included in list of touts is unnecessary 13 Lah 323=32 Cr L J 966=33 P L R 591=A I R 1931 Lah 543 High Court can revise order under Government of India Act, s 107 56 B 577=A I R 1932 Bom 596 But High Court interferes only in exceptional cases 31 P L R 1003 =32 Cr L J 1129=A I R 1931 Lah 98, see also 28 N L R 4=A I R. 1932 Nag 50 It is not necessary that ever member sho ll rece e ne ce of mea ne A I R 1932 Nag 141=28 N L R 15 Cr L J 672 Orders by District to a report of Senior Sub Judge ar before one is rightly included in the list of touts A I R 1931 Lah 156=32 Cr L J 730=32 P L R 9 Where inquiry is delegated to subordinate District Magistrate cannot act on report when person recommended to be declared tout comes and desires to be heard Matter of hearing him cannot be delegated 27 N L R 398=33 Cr L J 146=A I R 1931 Nag 187

CHAPTER VIII

Miscellaneous

Local Government to appoint Examiners

37. To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the Local Government shall, from time to time appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations

Exemption of High Court practitioners from certain parts of Act

38 Except as provided by sections 4, 5, "7,"* 16, "25"*, 27, 32 and 36, nothing in this Act applies to Advocates Vakils and Attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to Mukhtar's practising in such Court or to Advocates enrolled ' under section 41 of this Act,"† And, except as provided by section 36, nothing in this Act applies to persons enrolled as Advocates of any High Court, under the Indian Bar Councils Act, 1926 ‡

Notes—A person does not cease to be a vakil of a High Court by being admitted as a pleader in another Court 12 O L J 558=89 Ind Cas 187

Suspension or dismissal of person holding mukhtar and revenue agent's certificates

39. When any person who holds a certificate as a mukhtar under section 7 and a certificate as a revenue-agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other

Pleaders, &c, not to be suspended or dismissed without being heard

40 Notwithstanding anything hereinbefore contained no pleader, mukhtar or revenue agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him

Notes—*Under this section* a pleader should not be suspended without an opportunity being afforded to defend himself 76 Ind Cas 825=25 Cr L J 265

* The figures ...

† In s 38, the ... I of 1908 Court of the Punj ... the words "by the Chief

‡ Added by A ... 1884) s 7

41.* (1) A High Court not established by Royal Charter "in respect of which the Indian Bar Councils Act, 1926, is not in force"† may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and subject to such rules, may enrol such and so many

Power for certain High Courts to enrol advocates

entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors according as the Court may by its rules determine, and subject to those rules

(3) The High Court may dismiss any advocate so enrolled or suspend him from practice :

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, "except in the case of the Chief Courts of Oudh"‡ § and Sind ‖ unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government

Notes—The power of review conferred upon High Courts under sub section 12, Bar Councils Act, cannot be extended to an order passed under s 41, Legal Practitioners Act The High Court has inherent power to reinstate legal practitioners who have been dismissed from their profession The power to rescind order under s 41 possessed by the Court of Judicial Commissioner of Oudh vests in Chief Court But as the order passed by the Bench of the Judicial Commissioner's Court was confirmed by the Local Government, it should not be rescinded without its confirmation A I R 1934 Oudh 140=11 O W N 368=35 Cr L J 678 (F B)

42. ¶"So much of Chapter VI of Bombay Regulation II of 1827 as has not been repealed, ** Act I of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed

Repeal of Acts I of 1846 and XX of 1853

FIRST SCHEDULE

ENACTMENTS REPEALED

(*See section 2*)

Number and date of enactments	Title	Extent of repeal
Act XX of 1865	To amend the law relating to Pleaders and Muktars	The whole
Act XXIX of 1865	To amend the Pleaders, Mukhtars and Revenue agents Acts, 1865	So much as has not been repealed
Act IX of 1866	To extend to the Sadar Court of the North Western Provinces certain provisions of 'the Pleaders Mukhtars and Revenue Agents Act 1865,' and of Act No XXIX of 1865	The whole

* S 41 has been substituted by the Legal Practitioners Act (IX of 1884, s 8 for the original s 41 (relating to advocates of the Punjab Chief Court)

† Added by Act 38 of 1926

‡ Inserted by Act 32 of 1925

§ Certain words after this have been omitted having been repealed by Act XI of 1923 and Act 18 of 1919

‖ Substituted by Act 34 of 1926

¶ S 42 has been added by the Legal Practitioners Act (IX of 1884) s 9

** These words were inserted by Act I of 1903, Sch II

Number and date of enactments	Title	Extent of repeal.
Act IV of 1876	To authorize Revenue agents to practise in certain suits in the Munsif's Courts of the Lower Provinces of Bengal	The whole
Act XVII of 1877	The Punjab Courts Act, 1877.	Sections 42, 43, 44 and 45.

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES

(*See section 25*)

I

For a certificate authorising the holder to practise as a pleader—

(*a*) in the High Court and any Subordinate Court—rupees fifty

(*b*) in any Court of Small Causes in a Presidency town—rupees twenty five :

(*c*) in all other subordinate Courts—rupees twenty-five :

(*d*) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes [illegible] riminal Courts subordina[illegible]

(*e*) in the [illegible] Court of first instance not [illegible]

II

For a cert[illegible]

(*f*) [illegible]

(*g*) [illegible]

(*h*) in all other subordinate Courts—rupees fifteen :

(*i*) in the Courts of Subordinate Judges Munsifs, Asssistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency towns and in all Criminal Courts subordinate to the High Court—rupees ten :

(*j*) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five

III

For a cer[illegible] ue-agent—

[illegible], and in any revenue [illegible] any Revenue-office subordinate to a Commissioner—rupees ten ;

(*m*) in the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five

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THE LEGAL PRACTITIONERS (WOMEN) ACT, 1923.

ACT NO. XXIII OF 1923.

RECEIVED THE G.-G.'S ASSENT ON THE 2ND APRIL, 1923

An Act for the removal of doubts regarding the right of women to be enrolled and to practise as legal practitioners.

WHEREAS it is expedient to remove certain doubts which have arisen as to the right of women to be enrolled and to practise as legal practitioners ; It is hereby enacted as follows :—

Short title and extent. **1** (1) This Act may be called the Legal Practitioners (Women) Act, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas

Definition

2 In this Act "legal practitioner" means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879.*

Women not to be disqualified *by reason only of sex*

3. Notwithstanding anything contained in any enactment in force in British India or in the letters patent of any High Court or in any rule or order made under or in pursuance of any such enactment or letters patent, no woman shall, by reason only of her sex, be disqualified from being admitted or enrolled as a legal practitioner or from practising as such, and any such rule or order which is repugnant to the provisions of this Act shall, to the extent of such repugnancy, be void.

Notes—"The Letters Patent of several High Courts empower them to admit proper persons as Advocates, Vakils and Attorneys and to make rules for their qualification and admission Ss 6 and 17 of the Legal Practitioners Act, 1879, similarly give powers to the High Courts and the Chief Controlling Revenue authorities to make rules for the qualification and admission of persons as Pleaders and Mukhtars, and as Revenue-Agents respectively Ss 6 and 31 of the Bombay Pleaders Act, 1920 (Bombay Act XVII of 1920) contain similar provisions as regards pleaders in that presidency Conflicting decisions have been given by the High Courts as to the right of women who are otherwise qualified to be enrolled and to practise as legal practitioners The Government of India consulted Local Governments and other authorities on the question whether women should be as eligible as men to enter upon and earn as legal practitioners The General opinion expressed was that in the present condition of India, the question should be decided by Indian opinion An opportunity of obtaining the views of the Assembly upon the question arose in connection with the motion moved by *Dr H S Gour* for a reference of his bill further to amend the Legal Practitioners Act, 1879, Select Committee During the course of the debate upon that Resolution it was indicated that the [illegible] acceptance of [illegible]

the case in 64 Ind Cas 636 (F B) = 3 Pat L T 69 = 1922 Pat 97

THE LEGAL PRACTITIONERS (FEES) ACT, 1926

ACT NO. XXI OF 1926

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 25TH MARCH, 1926

An Act to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties

WHEREAS it is expedient to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties, It is hereby enacted as follows:—

Notes [illegible] Comm[illegible] a legal [illegible] negligence, [illegible]

Short title, extent and commencement

1 (1) This Act may be called The Legal Practitioners (Fees) Act, 1926.

(2) It extends to the whole of British India.

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* XVIII of 1879

(3) It shall come into force on such date as the Governor General in Coun il may by notification in the *Gazette of Indi* appoint

Interpreta ion

2 For the purposes of this Act unless there is anything repugnant in the subject or context —

(a) ' legal practitioner means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879, and

(b) a legal practitioner shall not be deemed to ' act if he only pleads or to ' agree to act if he agrees only to plead

Notes — No woman is d squalified by reason of her sex *Vi le* Act 23 of 1923

Clause (a —Legal practitioner includes advocate of High Court 132 Ind Cas 719=A I R 1931 Rang 104

who only
nglish law
ple delivered,
if gal process
he has no remedy and cannot recover the fees by
either from the solicitor or from the client *Moor* v *Row*, (1630) 1 Rep Ch 38, *Re May* (1858) 4 Jur N S 1169 494;
Kennedy v *Brown* (1863) 13 C B N 1895
N W P 83 2 M 138 (F mour
delivered
payment of
egal obliga
tion *Morr s* v , (1859) 9 I
C R L 157 *Re Le Brasseur and Oakely* (1895) 2 Ch 487 *Re Cockayne* (1884) 19 L J 500 *Halsbury* vol II p 391 An express promise by the client himself to pay fees to Counsel for *advocacy* whether made before or during or after the l tigation has no bind ng eff ct *Kennedy* v *Brown* (1863) 13 C B N S 677 The relation of Counsel and cl ent renders the parties mutually incapable of making any legal contract of hiring any service concerning advocacy in litigat on *Ibid* The request and prom se of the client and the services of Counsel create neither an
hether capable of
mise 2 *Halsbury*
3 M 132 (F B),
25 A 209 (F B)

Agreement for engagement of legal practitioner

3 Any legal practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional services

Notes—Under section 28 of the Legal Pract tioners Act which has been repealed by th s Act no agreement entered into by any pleader mukhtar or revenue agent with any person retaining or employing him respecting the amount and manner of payment for the whole or any part of any past or future service fees charges or disbursements in respect of business done or to be done by such Pleader, Mukhtar or Revenue agent shall be valid unless it is made in writing s gned by such person and is within fifteen days from the day on which it is executed filed in the D
of the business in respect portion
The rule was hel l to apply be done
Cas 343, 14 M 63, 25 C I Ind
M W N 524 In the 28, 1912
fair and just remuneration was
18 A L J 373, 59 Ind 8,
47, 11 C L R 137 Cas
need not be filed in Court Where fees are not settled with client fees payable to legal practitioner are fees computed in costs as pleader s fees according to existing rules 131 Ind Cas 542=9 Pat 865=A I R 1931 Pat 137=13 P L T 200 Private agreement for fees can be impugned like any other contract 132 Ind Cas 719=A I R 1931 Rang 104

Right of legal practitioner to sue for fees

4 Any such legal practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement or, if no such fee has been settled, a fee computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner

Notes —This Act further repeals and re enacts further provisions now contained in the Legal Practitioners Act, 1879, and the Bombay Pleaders Act 1920, in so far as those provisions are respectively inconsistent or not inconsistent with the recommendations—*Statement of Objects and Reasons* Now legal practitioners are entitled to sue for their fees whether there be an express or implied contract A barrister can see his client, settle his fees and act for his client He can also sue his client for recovery of fees 55 A 570=143 Ind Cas 727=1933 A L J 451=A I R 1933 All 417 (F B) see also 132 Ind Cas 719=A I R 1931 Rang 104 Where several pleaders are engaged each is entitled to his stipulated fees 131 Ind Cas 542=9 Pat 865=13 P L T 200=A I R 1931 Pat 137 Where pleader is engaged but vakalatnama bearing pleader s signature is not filed pleader is entitled to get remuneration for work done, A I R 1931 Pat 137=13 P T L 200=9 Pat 865

Liability of legal practitioner to be sued

5 No legal practitioner who has acted or agreed to act shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties

[illegible] legal practitioners, be sued for negli [illegible] r O XXI, r 63 C P [illegible] onclusive 'subject to [illegible] nd under Art 11 of [illegible] herefore, it would be culpable negligence on the part of an Advocate to file an appeal or revision notwithstanding the provisions of order XXI r 63 of Civil Procedure Code 27 Ind Cas [illegible]

[illegible] legal practitioner is guilty of negligence and an action for damage lies against him *Hart* v *Trime ubi supra*, *Donaldson* v *Haldane* (1840) 7 Cl & Fin 762 H L *Parker* v *Rolls* (1854) 14 C B 691 *Elkington* v *Holland* (1842) 9 M & W 659 Even after the legal practitioner s death an action lies against his representatives *Davies* v *Wood*, (1903) 88 L T 19 *contra*, *Young* v *Willingford* (1883) 52 L J Ch 590 It is immaterial whether the legal practitioner is paid or acts gratuitously [illegible] such a case is [illegible] v *Keely* (1864) [illegible] L In order to [illegible] e and (2) damage [illegible] H & N 367 In [illegible] he duty of every [illegible] usually arise from [illegible] *tu* and *ex delecto* [illegible] 879) 4 C P D [illegible] *Taylor* v *Man* [illegible] amount of the [illegible] *ns* (1878) 4 C P [illegible] n respect of the [illegible] *Lewis* v *Samuel*, (1846) 8 Q B 685, *Patmore* v *Brinie*, (1817) 2 Stark 59, *Re Massy and Carry*

(1884) 26 Ch D 459 C A , *Olley* v *Gilbert*, (1845) 8 Beav 602 A legal practitioner is not liable when he has fully explained the position to his client and is nevertheless ... D ron (1862) 3 F & F 744 The cause of action when the loss is sustained *Smith* v ... *Laws of England*, Vol 26, pp 753, 755

6 [Repeals] Repeated by Act XXII of 1927

THE LEGAL REPRESENTATIVES' SUITS ACT, 1855.

ACT NO XII OF 1855

RECEIVED THE G G S ASSENT ON THE 27TH MARCH, 1855.

An Act to enable Executors, Administrators, or Representatives to sue and be sued for certain wrongs

Preamble

WHEREAS it is expedient to enable executors, administrators or representatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against such executors, administrators, or representatives, It is enacted as follows —

Executors may sue and be sued in certain cases for wrongs committed in life time of deceased

1 An action may be maintained by the executors administrators or representatives of any person deceased, for any wrong committed in the lifetime of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death, and the damages, when recovered shall be part of the personal estate of such person

and ... the executors or administrators, or ... ceased for any wrong committed by ... been subject to an action, so as such wrong shall have been committed within one year before such person's death, and the damages to be recovered in such action shall, if ... bound to administer according to ... of administration as the simple

Notes—Act XII of 1855 which deals with maintenance of cases by executors, administrators or representatives of decreased person for recovery of certain moneys, applies to cases where the person ... might in his lifetime have ... has not instituted an action—*Kr* ...
=8 C W N 329
cl 2 of s 1 has no ...
28 M 487, see also ...
tatives for a wrong done by the dece...

... 251 In India the doctrine of *actio personalis moritur cum persona* does not form ... the representative of a deceased ... and against the representatives of a ... f the Probate and Administration Act of ... Suits Act of 1855 so far as the latter ... 53 C 987 = 106 Ind Cas 286 = A I R

Death of either party not to abate suit

2 No action commenced under the provisions of this Act shall abate by reason of the death of either party, but the same may be continued by or against the executors, administrators, or representatives of the party

deceased Proviso

Provided that, in any case in which any such action shall be continued against the executors, administrators, or representatives of a deceased party, such executors, administrators or representatives may set up a want of assets as a defence to the action, either wholly or in part in the same manner as if the action had been originally commenced against them

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THE LEGISLATIVE MEMBERS EXEMPTION ACT, 1925

ACT NO XXIII OF 1925

RECEIVED THE G G'S ASSENT ON THE 11TH SEPTEMBER, 1925

An Act to confer certain exemptions on members of legislative bodies constituted under the Government of India Act

WHEREAS it is expedient to exempt members of any legislative body constituted under the Government of India Act from liability to serve as jurors or assessors and from arrest and detention in prison under civil process at the time of meeting of such body or of a committee thereof, It is hereby enacted as follows —

Notes — 'In paragraph 91 of the Report the Reforms Enquiry Committee recommended that members of the legislatures in India should be exempt from sitting as jurors or assessors in criminal trials and should also be immune from arrest and *imprisonment for Civil Cause during the sessions of the legislatures and for periods of* a week immediately preceding and following actual meetings Paragraph 124 of the report indicates that their recommendations were unanimous recommendations of the Committee as a whole The Bill seeks to give effect to them by legislation with the following modifications —

(a) Immunity from arrest and imprisonment from Civil Causes is given to members of committees of the legislatures for the sittings of such committees and in the case of central legislature to members of joint sittings, conferences and joint committees *of the two Chambers*, and

(b) the period of immunity has been increased in all cases from a week before and after to fourteen days before and after each meeting or sitting '—*Report of the Select Committee*

Short title and commencement

1 (1) This Act may be called the Legislative Members Exemption Act, 1925

(2) It shall come into force on such date as the Governor General in Council may by notification in the *Gazette of India*, appoint

Amendment of section 320, Act V of 1898

2 After clause (*a*) of section 320 of the Code of Criminal Procedure, 1898, the following

' (*aa*) me

a Legislative (

Notes — This clause has been added for public convenience

Insertion of new s 135A in Act V of 1908

3 After section 135 of the Code of Civil Procedure, 1908, the following section shall be inserted, namely —

Exemption of members of legislative bodies from arrest and detention under civil process

"135A. (1) No person shall be liable to arrest or detention in prison under civil process—

(*a*) if he is a member of either Chamber of the Indian Legislature or of a Legislative Council constitutued under the Government of India Act, during the continuance of any meeting of such Chamber or Council

(*b*) if he is a member of any committee of such Chamber or Council, during the continuance of any meeting of such committee;

(*c*) if he is a member of either Chamber of the Indian Legislature, during the continuance of a joint sitting of the Chambers, or of a meeting of a conference or joint committee of the Chambers of which he is a member;

and during the fourteen days before and after such meeting or sitting

(2) A person released from detention under sub section (1) shall, subject to the provisions of the said sub section, be liable to re arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub section (1)."

Notes—Upon the authorities the Court found in *Goudy* v *Duncombe*, 17 L. J. Ex 76—1 Exch 439, that the privilege of a member of the House from arrest during the continuance of the session extends to a period of forty days before and after a meeting of Parliament, and that the privilege whether after a prorogation or a ... not a ... ays in ... ries at

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LETTERS PATENT (ALLAHABAD).

Establishing a High Court in the North Western Provinces of the Bengal Presidency, dated 17th March, 1866

Recital of Acts 24 & 25 Vict C 104

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith To all to whom these presents shall come, greeting

Whereas by an Act Parliament passed in the twenty fourth and twenty fifth years of our reign, entitled "An Act for establishing High Courts of Judicature in India", it was amongst other things, enacted that it shall be lawful for Her Majesty by Letters P... of the United Kingdom to erect ... at Fort William in Bengal, for the ... William, aforesaid, and that such H... and as many Judges, not exceeding ... ersons qualified as ... who at the time of ... Supreme Court of Judicature and permanent Judges of the Court of Sudder Dewany Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief ... ief Justice of such High ... gh Court as aforesaid, the ... awlut and Sudder Nizamut

And that the High Court of ... exercise all such civil, crimina... ould have and intestate and matrimonial juri... original and appellate, and all such testamentary, powers and authority for, and in relation to the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent as aforesaid, grant and direct subject however, to such directions and limitations as to the exercise of original civil and ...

... of India in Council, the High Court so to b... ould have and exercise all jurisdiction, and every power and authority whatsoever in any manner

vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last mentioned Courts

And whereas it is further declared by the said recited Act that it shall be lawful for Us by Letters Patent to erect and establish a High Court of Judicature in and for any portion of the territories within Her Majesty s dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be [illegible] at the said Presidencies, as We from [illegible] and that, subject to the directions of [illegible] the said recited Act relative to High Courts and to the Chief Justice and other Judges of such Courts, and to the Governor General or Governor of the Presidency, in which such High Courts were established, shall, as far as circumstances may permit, be applicable to any new High Court which may be established in the said territories, and to the Chief Justice and other Judges thereof, and to the persons administering the Government of the said territories

And whereas We did, upon full consideration of the premises, think fit to *erect and establish and by Our Letters Patent under the Great Seal of the* United Kingdom of Great Britain and Ireland, bearing date at Westminister, the fourteenth day of May, in the twenty fifth year of Our reign, in the year of our lord one thousand eight hundred and sixty two did accordingly, for Us, Our heirs and successors, erect and establish at For William in Bengal, for the Bengal Division of the Presidency of Fort William, aforesaid a High Court *of Judicature which should be called the High Court of Judicature at Fort* William in Bengal, and did thereby constitute the said Court to be a Court of Record

Establishment of High Court *for the North Western Provinces*

1 Now know Ye that We, upon full consideration of the premises, and of Our special Grace certain knowledge and mere motion have thought fit to erect and establish, and by these presents, We do accordingly for Us Our heirs and successors, erect and establish for the North Western Provinces of the Presidency of Fort William aforesaid, a High Court of Judicature, which shall be called the High Court of Judicature, for the North Western Provinces and We do hereby constitute the said Court to be a Court of Record

Constitution and first Judges of the High Court

2 And We do hereby appoint and ordain that the said High Court of Judicature for the North Western Provinces shall, until further or other provision shall be made by Us, or Our heirs and successors in that behalf in accordance with the said recited Act consists of a Chief Justice and *five Judges, the first Chief Justice being Walter Morgan, Esquire and the* five Judges being Alexander Ross Esquire, William Edwards, Esquire, William Roberts Esquire, Francis Boyle Person, Esquire, and Charles Arthur Turner, Esquire, being respectively qualified, as the said Act is declared

Declaration to be made by Judges

3 And We do hereby ordain that the Chief Justice and every Judge of the said High Court of Judicature for the North Western Provinces, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor General in Council may commission to receive it —

'I A B appointed Chief Justice (or a Judge) of the High Court of Judicature for the North Western Provinces, do solemnly declare that I will faithfully *perform the duties of my office to the best of my ability, knowledge and judgment* '

Seal

4 And We do hereby grant, ordain and appoint that the said High Court shall have and use, as occasion may require, a

Arms, within an exergu

"The Seal of the High

further grant, ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section 7 of the said recited act, and We do

r it shall happen that the office

ody of the said seal be com-

be and is hereby authorized and empowered to demand, seize and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her or their possession

Writs, etc, to issue in the name of the Crown and under seal

5 And We do hereby further grant, ordain and appoint that all writs, summons, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature for the North-Western Provinces, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court

Appointment of officers

6 And We do hereby authorise and empower the Chief Justice of the said High Court of Judicature for the North Western Provinces, from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor General in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the *said High Court* by these Our Letters Patent And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors give, grant, direct and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall from time to

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... and it is Our will and pleasure ...

every the officers and clerks to be appointed

in the limits of the jurisdiction of the said Co

respective offices, but this proviso shall not

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Admission of Advocate, Vakils and Attorneys

Power of High Court in admitting Advocate Vakils and Attorneys

7. And We do hereby authorize and empower the said High Court of Judicature for the North Western Provinces to approve, admit and enrol such and so many Advocates, Vakils and Attorneys as to the said High Court shall seem meet, and such Advocates,

to appear for the

to plead and act,

ay by its rules and

In making rules for the qualifications, etc., of Advocates Vakils and Attorneys

8 And We do hereby ordain that the said High Court of Judicature for the North Western Provinces shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys at law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause the said Advocates Vakils or Attorneys at law, and no person whatsoever but such Advocates Vakeels or Attorneys shall be allowed to act or to plead for, or on behalf of any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf or on behalf of a co suitor

Notes—Criminal prosecution should precede disciplinary action A I R 1931 P C 112 (P C)=53 A 183=32 Bom L R 945=58 I A 15?=1931 A L J 450 Conviction of criminal offence involving moral turpitude is sufficient basis for order of suspension of pleader or mukhtar but not to vakil who must be dealt with under cl 8 A I R 1931 Oudh 161 (F B)=8 O W N 267

Civil Jurisdiction of the High Court

Extraordinary original civil jurisdiction

9 And We do further ordain that the said High Court of Judicature for the North Western Provinces shall have power to remove, and to try and determine as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court

Appeal from the Court of original jurisdiction to the High Court in its appellate jurisdiction

10 [And We do further ordain that an appeal shall lie to the said High Court of Judicature at Allahabad from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal (jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one judge of the said High Court or one judge of any Division Court, pursuant to section 108 of the Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the judge who passed the judgment declares that the case is a fit one for appeal, but that the right of appeal from other judgment of Judges of the said High Court or of such Division Court shall be to Us Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided]*

Notes—Where decision is based on numerous rulings of the same High Court leave to appeal under Letters Patent should not be allowed A I R 1933 All 298 =141 Ind Cas 25 No review lies from judgment of Bench hearing appeal under clause 10 1931 A L J 187=53 A 535=13? Ind Cas 24 The Court in Letters Patent appeal exerci [illegible] A I R 1934 All 551= 148 Ind Cas 1175 [illegible] Cr Pro Code no appeal under this [illegible] 934 A L J 684 Appeal lies from orde [illegible] 41, rule 23 of C P Code A I R 1933 [illegible] J 127

* Substituted by Letters Patent 9th December 19?7

11 And We do further ordain that the said High Court of Judicature for the North Western Provinces shall be a Court of Appeal from the Civil Courts of the North Western Provinces, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force

Appeal from Courts in the Provinces

12 And We do further ordain that the said High Court of Judicature for the North Western Provinces shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the North Western Provinces, as that which is exercised in the Bengal Division of the Presidency of Fort William, by the High Court of Judicature at Fort William in Bengal, but subject to the provisions of any laws or regulations now in force

Jurisdiction as to infants and lunatics

Notes —*Vide* A I R 1934 All 722=1934 A L J 399=150 Ind Cas 149

13 And We do further ordain that with respect to the law or equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature for the North Western Provinces, in the exercise of its extraordinary original civil jurisdiction such law or equity and rule of good conscience shall (until otherwise provided) be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein

In the exercise of extra ordinary original civil juris diction

14 And We do hereby ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature for the North Western Provinces to each case coming before it in the exercise of its appellate jurisdiction such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case

By High Court in the exercise of appellate jurisdiction

Criminal Jurisdiction.

15 And W[illegible]

Ordinary origi[illegible] of the High Cou[illegible]

[illegible] said Provinces as the High Court of Judicature at Fort William in Bengal, shall have criminal jurisdiction over at the date of the publication of these presents, and the criminal jurisdiction of the said last mentioned High Court over such persons shall cease at such date Provided, nevertheless, that criminal proceedings which shall at such date have been commenced in the said last mentioned High Court shall continue as if these presents had not been issued

16 And We do further ordain that the said High Court of Judicature for the North Western Provinces, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law

Jurisdiction as to persons

17 And We do further ordain that the said High Court of Judicature, for the North Western Provinces, shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the Sudder Nizamut Adawlut, and shall have authority to try at its discretion any such persons

Extraordinary original criminal jurisdiction

brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf

18 And We do further ordain that there shall be no appeal to the said High Court, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

No appeal from High Court exercising original jurisdiction Court may reserve points of law

19 And We do further ordain that, on such point or points of law being so reserved as aforesaid, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right

High Court to review cases on points of law reserved by one or more Judges of the said High Court

20 And We do further ordain that the said High Court of Judicature for the North Western Provinces, shall be a Court of Appeal from the Criminal Courts of the said Provinces and from all other Courts from which there is now an appeal to the Court of Sudder Nizamut Adawlut for the said Provinces and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said Court of Sudder Adawlut by virtue of any law now in force

Appeals from Criminal Courts in the Provinces

21 And We do further ordain that the said High Court shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers now authorized to refer cases to the Court of Sudder Nizamut Adawlut of the North Western Provinces, and to revise all such cases tried by any Officer or Court possessing criminal jurisdiction, as are now subject to reference or to revision by the said Court of Sudder Nizamut Adawlut

Hearing of referred cases and revision of criminal trials

22 And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it though such case belongs in ordinary course to the jurisdiction of some other officer or Court

High Court may direct the transfer of a case from one Court to another

Act under which punishments to be inflicted

23 And We do further ordain that all persons brought for trial before the said High Court of Judicature for the North Western Provinces either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision is made by Act No XLV of 1860 called the 'Indian Penal Code', or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise

Indian Penal Code

appeal to Privy Council must be granted 145 Ind Cas 853=1933 A. L. J 273=55 A 246=A I R 1933 All 225, see also A I R 1934 All 898=150 Ind Cas 699=1934 A L J 722

Appeal from interlocutory judgment

31 And We do further ordain that it shall be lawful for the said High Court of Judicature for the North Western Provinces, at its discretion on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order or sentence of the High Court, in any such proceedings as aforesaid, not being of criminal jurisdiction to grant permission to such party to appeal against the same to Us Our heirs and successors in Our or Their Privy Council, subject to the same rules regulations and limitations, as are herein expressed respecting appeals from final judgments decrees, orders and sentences

Appeal in criminal cases, etc

32 And We do further ordain that from any judgment, order or sentence of the said High Court of Judicature for the North Western Provinces, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or successors in Council Provided the said High Court shall declare that the case is a fit one for such appeal and under such conditions as the said High Court may establish or require subject always to such rules and orders as We may, with the advice of our Privy Council, hereinafter make in that behalf

Rule as to transmission of copies of evidence and other documents

33 And We do further ordain that, in all cases of appeal made from any judgment, order, sentence or decree of the said High Court of Judicature for the North Western Provinces, to Us, Our heirs or successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council a true and correct copy of all evidence, proceedings judgments decrees and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court, and that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a copy of the reasons given by the Judges of such Court, or by any such Judges for or against the judgment or determination appealed against

And We do further ordain that the High Court, shall in all cases of appeal to Us, Our heirs or successors, conform to and execute or cause to be executed, such judgments and orders as We Our heirs or successors, in Our or Their Privy Council shall think fit to make in the premises in such manner as any original judgment, decree or decretal orders or other order or rule of the said High Court should or might have been executed

Calls for Record, etc., by the Government

High Court to comply with requisition from Government for records, etc.

34 And it is Our further will and pleasure that the said High Court of Judicature for the North Western Provinces shall comply with such requisition as may be made by the Government for records, returns and statements in such form and manner as such Government may deem proper.

brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf

No appeal from High Court exercising original jurisdiction Court may reserve points of law

18 And We do further ordain that there shall be no appeal to the said High Court, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

High Court to review cases on points of law reserved by one or more Judges of the said High Court

19 And We do further ordain that, on such point or points of law being so reserved as aforesaid, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right

Appeals from Criminal Courts, in the Provinces

20 And We do further ordain that the said High Court of Judicature for the North Western Provinces, shall be a Court of Appeal from the Criminal Courts of the said Provinces and from all other Courts from which there is now an appeal to the Court of Sudder Nizamut Adawlut for the said Provinces and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said Court of Sudder Adawlut by virtue of any law now in force

Hearing of referred cases and revision of criminal trials

21 And We do further ordain that the said High Court shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers now authorized to refer cases to the Court of Sudder Nizamut Adawlut of the North Western Provinces, and to revise all such cases tried by any Officer or Court possessing criminal jurisdiction, as are now subject to reference or to revision by the said Court of Sudder Nizamut Adawlut

High Court may direct the transfer of a case from one Court to another

22 And We do further ordain that the said High Court shall have power *to direct the transfer of any criminal case or* appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it though such case belongs in ordinary course to the jurisdiction of some other officer or Court

Act under which punishments to be inflicted

Indian Penal Code

23 And We do further ordain that all persons brought for trial before the said High Court of Judicature for the North [illegible]

original jurisdiction,
reference or revision,
Act No XLV of 1850
ing or excluding the said Act which may have been passed prior
lication of these presents, shall be liable to punishment under t
or Acts, and not otherwise

24 And We do further ordain that whenever it shall appear to the Lieutenant Governor of the North Western Provinces, subject to the control of the Governor General in Council, convenient that the jurisdiction and power by these our Letters Patent, or by the recited Act vested in the said High Court, should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of any Sudder Dewany Adawlut or the Sudder Nizamut Adawlut of the North Western Provinces other than the usual places of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court, at such place or places, shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India

Judges may be authorized to sit in any places by way of circuit or special commission

Testamentary and Intestate Jurisdiction

25 And We do further ordain that the said High Court of Judicature for the North Western Provinces, shall have the like power and authority as that which is now lawfully exercised within the said Provinces, by the said High Court of Judicature at Fort William in Bengal, in relation to the granting of probates of last Wills and testaments, and letters of administration of the goods, chattels credits and all other effects whatsoever of persons dying intestate, and that the jurisdiction of the said last mentioned High Court in relation thereto shall cease from the date of the publication of these presents: Provided always that any proceedings already commenced in relation to any of the matters aforesaid in the said last mentioned High Court shall continue as if these presents had not been issued Provided also that nothing in these Letters Patent contain shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration

Testamentary and Intestate jurisdiction

Matrimonial Jurisdiction

26 And We do further ordain that the said High Court of Judicature for the North Western Provinces shall have jurisdiction, within the said Provinces, in matters matrimonial between our subjects professing the Christian religion Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said provinces lawfully possessed thereof

Matrimonial Jurisdiction

Powers of single Judges and Division Courts

27 And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature for the North Western Provinces, in the exercise of its original or appellate jurisdiction may be performed by any Judge or by any Division Court thereof, appointed or constituted for such purpose [in pursuance of section 108 of the Government of India Act 1915]*, and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges should be equally divided they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinions of the majority of the Judges who have heard the case including those who first heard it

Single Judges and division Courts

* Substituted by Letters Patent of 1927.

Notes.—Only points of difference should be referred and not whole case 146 Ind Cas 84=1933 A L J 1127=A I R 1933 All 861 (S B) S 98 C P Code and cl 27 neither overlap nor are incongruous Appeals under code are governed by s 98 A I R 1932 All 195=1931 A L J 1137 Although second appellate Court constituted by single Judge and matter is difficult for decision, yet reference to Bench of two Judges is not necessary A I R 1931 All 207=1931 A L J 267=129 Ind. Cas 717

Civil Procedure

28 And We do further ordain that it shall be lawful for the said High Court of said Judicature for the North Western Provinces from time to time to make rules and orders for the purpose of adopting, as far as possible, the provisions of the Code of Civil Procedure, being an Act passed by the Governor General in Council and being Act No VIII of 1859, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdictions, respectively

Regulation of proceedings

Criminal Procedure

29. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature for Fort William in Bengal, immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India, and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor General in Council, and being Act No XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid

Regulation of proceedings

Appeals to Privy Council.

30. And We do further ordain that any person or persons may appeal to Us Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the said High Court of Judicature for the North Western Provinces made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by the Judges of the said High Court or of any Division Court from which an appeal shall not lie to the said High Court, under the provisions contained in the 10th clause of these presents Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees or that such judgment, decree or order shall involve directly or indirectly some claim, demand or questions to or respecting property amounting to or of the value of, not less than 10,000 rupees, or from any other final judgment decree or order made either on appeal or otherwise as aforesaid when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council subject always to such rules and orders as are now in force or may, from time to time, be made, respecting appeals to Ourselves in Council from the Courts of the said Provinces, except so far as the said existing rules and orders, respectively, are thereby varied and subject also to such further rules and orders, as We may, with the advice of Our Privy Council hereafter make in that behalf

Power to appeal,

Notes —Where pleader is punished for contempt of Court committed personally and also punished professionally by order suspending him from practice leave to

appeal to Privy Council must be granted 145 Ind Cas 853=1933 A. L J 273=55 A 246=A I R 1933 All 225, see also A I R 1934 All 898=150 Ind Cas 699 =1934 A L J 722

Appeal from interlocutary judgment

31 And We do further ordain that it shall be lawful for the said High Court of Judicature for the North Western Provinces at its discretion on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order or sentence of the High Court, in any such proceedings as aforesaid not being of criminal jurisdiction to grant permission to such party to appeal against the same to Us, Our heirs and successors in Our or Their Privy Council, subject to the same rules, regulations and limitations, as are herein expressed respecting appeals from final judgments, decrees, orders and sentences

Appeal in criminal cases etc

32 And We do further ordain that from any judgment, order or sentence of the said High Court of Judicature for the North Western Provinces, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us Our heirs or successors in Council Provided the said High Court shall declare that the case is a fit one for such appeal and under such conditions as the said High Court may establish or require subject always to such rules and orders as We may, with the advice of our Privy Council, hereinafter make in that behalf

Rule as to transmission of copies of evidence and other documents

33 And We do further ordain that, in all cases of appeal made from any judgment, order, sentence or decree of the said High Court of Judicature for the North Western Provinces to Us, Our heirs or successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court, and that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a copy of the reasons given by the Judges of such Court, or by any such Judges, for or against the judgment or determination appealed against

And We do further ordain that the High Court, shall in all cases of appeal to Us, Our heirs or successors, conform to and execute or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or Their Privy Council, shall think fit to make in the premises in such manner as any original judgment, decree or decretal orders or other order or rule of the said High Court, should or might have been executed

Calls for Record, etc, by the Government

High Court to comply with requisition from Government for records, etc.

34 And it is Our further will and pleasure that the said High Court of Judicature for the North Western Provinces shall comply with such requisition as may be made by the Government for records, returns and statements in such form and manner as such Government may deem proper.

Powers of Indian Legislature preserved

35 And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor General in Legislative Council, and also of the Governor General in Council under section 71 of the Government of India Act, 1915, and also of the Governor General in cases of emergency under section 72 of that Act and may be in all respects amended and altered thereby

Powers of Indian Legislature preserved

In witness whereof We have caused these Our Letters to be made Patent Witness Ourself at Westminister, the seventeenth day of March in the twenty ninth year of Our reign

By warrant under the Queen s Sign Manual

(Sd) C ROMILLY

LETTERS PATENT (CALCUTTA)*

Letters Patent for the High Court of Judicature at Fort William in Bengal, dated 28th December, 1865

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith To all to whom these presents shall come greeting: Whereas by an Act of Parliament passed in the twenty fourth and twenty fifth years of Our reign, entitled 'An Act for establishing High Courts of Judicature in India," it was, amongst other things, enacted that it shall be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at Fort William in Bengal, for the Bengal Division of the Presidency of Fort William aforesaid and that such High Court should consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint who shall be selected from among persons qualified as in the said Act is declared Provided always that the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicatures, and permanent Judges of the Court of Sudder Dewany Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and [illegible] Court as aforesaid the Supreme Cour[illegible] Adawlut and Sudder Nizamut Adawlu[illegible] should be abolished

Recital of Acts 24 & 25 Vict c 104

And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, a[illegible] intestate and matrimonial jurisdictic[illegible] powers and authority for, and in [illegible] [illegible]ive as by such Letters [illegible]thout prejudice to the [illegible] the Governor General [illegible]shed should have and exercise all jurisdiction, and every power and authority whatsover in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last mentioned Courts

* Letters Patent of Bombay and Madras are similarly worded

And whereas We did, upon full consideration of the premises, think fit to *erect and establish, and* by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the fourteenth day of May, in the twenty fifth year of Our Reign, in the year of Our Lord one thousand eight hundred and sixty two, did, accordingly, for Us, Our heirs and successors, erect and establish, at Fort William in Bengal, for the Bengal Division of Presidency of Fort William aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at Fort William in Bengal and did thereby constitute the said Court to be a Court of Record, and whereas We did thereby appoint and ordain that the said High Court of Judicature at Fort William in Bengal should, until further or other provision should be made by Us or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and thirteen Judges, and did thereby in addition to the persons who, at the time of the [illegible] Judges of the Supreme Court of [illegible] f Sudder Dewany Adawlut in [illegible] appoint certain other persons, [illegible] declared, to the Judges of the said High Court;

And whereas on the thirtieth day of January one thousand eight hundred and sixty three, We did, in the manner in the said recited Act, provide, direct and ordain that the said High Court should consist of a Chief Justice and fourteen Judges.

And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as her Majesty might think fit, of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:

And whereas by the Act of the twenty eighth year of Our reign, chapter fifteen, entitled "An Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the said Courts," the time for issuing fresh Letters Patent has been extended to the first of January one thousand eight hundred and sixty six

And whereas, in order to make further provision respecting the constitution [illegible] justice thereby, it is expedient [illegible] nth of May One thousand eight [illegible] that some of the powers and provisions thereby granted and made should be granted, and made with amendments and additional powers and provisions by fresh Letters Patent

Revocation of Letters Patent of 1862.

1. Now know Ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge and mere motion, have thought fit to revoke, and do by these presents (from and after the date of the publication thereof as hereinafter provided, and subject to the provisions thereof) revoke Our said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty two, except so far as the Letters Patent of the fourteenth year of His Majesty King George the Third, dated the twenty sixth of March, one thousand seven hundred and seventy four, establishing a Supreme Court of Judicature at Fort William in Bengal, were revoked or determined thereby,

High Court to be continued

2 And W[illegible] [illegible] hundred and sixty two, the High Court of Judi-

cature, called the High Court of Judicature at Fort William in Bengal, shall be and cont ... thereof, ... il Divi ... Court ... menced ... the date of the publication of these Letters Patent, shall be continued and depend in the said High Court, as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent, shall continue in force, except so far as the same are altered hereby, until the same are altered by competent authority

Judges of the said High Court to be continued

3 And We do hereby appoint and ordain that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice or Judges, or acting Chief Justice or Judges, if any, of the said High Court of Judicature at Fort William in Bengal, shall continue to be the Chief Justice and Judges, or acting Chief Justice or Judges of the said High Court until further or other provision shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act for establishing High Courts of Judicature in India

Clerks, etc, of the said High Court to be continued

4 And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at Fort William in Bengal, appointed by virtue of the said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty two shall continue to hold and enjoy his office and employment, with the salary thereunto annexed until he be removed from such office and employment, and he shall be subject to the like power of removal regulations and provisions as if he were appointed by virtue of these Letters Parent

Declaration to be made by Judges

5 And We do hereby ordain that the Chief Justice and every Judge who shall be from time to time appointed to the said High Court of Judicature at Fort William in Bengal, previously to entering upon the execution of the duties of his office shall make and subscribe the following declaration before such authority or person as the Governor General in Council may commission to receive it

"I, A B, appointed Chief Justice (*or* a Judge) of the High Court of *Judicature at Fort William in Bengal do solemnly declare that I will faithfully* perform the duties of my office to the best of my ability knowledge and judgment"

Seal

6. And We do hereby grant, ordain and appoint that the said High Court of Judicature at Fort William in Bengal shall have, and use, as occasion may require, a seal bearing ... Arms within an exergue or label surrounc ... "The Seal of the High Court at Fort W ... rther grant ordain and appoint that the said Seal shall be delivered to and kept in the custody of the Chief Justice, and in case of vacancy of the office of Chief Justice, or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section 7 of the recited Act, and We do further grant ordain and appoint that, whensoever it shall happen that the office of Chief Justice, or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize and take the said Seal from any person or persons whomsoever,

by what ways and meanssoever the same may have come to his, her or their possession

Writs etc, to issue in name of the Crown and under seal

7 And We do hereby further grant, ordain and appoint that all writs, summons, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature at Fort William in Bengal, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court

Appointment of officers

8 And We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Fort William in Bengal, from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor General in Council to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent And it is Our further will and pleasure and We do hereby, for Us, Our heirs and successors, give grant direct and appoint that all and every the officers and clerks to be appointed as afore said shall have and receive respectively such reasonable salaries as the Chief Justice shall from time to time, appoint for each office and place respectively and as the Governor General in Council, shall approve of Provided always and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as thay shall hold their respective offices, but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor General in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules

Admissions of Advocates, Vakils and Attorneys

Powers of High Court in admitting Advocates Vakils and Attorneys

9 And We do hereby authorize and empower the said High Court of Judicature at Fort William in Bengal, to approve, admit and enrol such and so many Advocates Vakils and Attorneys as to the said High Court shall seem meet and such Advocates, Vakils and [illegible] authorized to appear for the suitors of [illegible] t, or to plead and act, for the said suit [illegible] nay, by its rules and directions determine, and subject to such rules and directions

In making rules for the qualifications etc, of Advocates Vakils and Attorneys

10 And We do hereby ordain that the said High Court of Judicature at Fort William in Bengal, shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys at law of the said High Court, and shall be empowered to remove or to suspend from practice on reasonable cause, the said Advocates Vakils or Attorneys at law, and no person whatsoever but such Advocates Vakils or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf or on behalf of a co-suitor

Notes —Three judges can enquire into misconduct of advocates A I R 1932 [illegible] 131 (F B)=54 M [illegible]=61 M L J 148

Civil jurisdiction of the High Court

11. And We do hereby ordain that the said High Court of Judicature at Fort William in Bengal, shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time, be declared and prescribed by any law made by competent legislative authority for India, and until some local limits shall be so declared and prescribed within the limits declared and prescribed by the proclamation fixing the limits of Calcutta, issued by the Governor General in Council, on the 10th day of September, in the year of Our Lord one thousand seven hundred and ninety four, and the ordinary original civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction

Local limits of the ordinary original jurisdiction of the High Court

12 And We do further ordain that the said High Court of Judicature at Fort William in Bengal in the exercise of its Ordinary Original Civil Jurisdiction, shall be empowered to receive, try and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property, shall be situated, or, in all other cases, if the cause of actions shall have arisen, either wholly or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within such limits except that the said High Court shall not have such Original Jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of property sued for does not exceed one hundred rupees

Original jurisdiction as to suits

Notes—Suit for setting aside sale of immovable property is suit for land A I R 1933 Bom 398=57 B 456=35 Bom L R 630 Where property is situate in Native State High Court can order sale of such property in mortgage decree A I R 1932 Bom 642=57 B 234=34 Bom L R 1384 English cases are not helpful to interpret clause 72 56 B 324=34 Bom L R 236=137 Ind Cas 381 Where cause of action arises in part outside original jurisdiction leave should be obtained A I R 1932 Bom 291=56B 324, see also A I R 1931 Cal 763=58 C 598 In contract cause of action is concurrence of parties 134 Ind Cas 65=58 C 539=A I R 1931 Cal 659 "Suits for land" means suits that affect proprietory or possessory title to land or other immovable property 58 C 768=134 Ind Cas 436 'Cause of action' means entire set of facts which would give rise to enforceable claim 134 Ind Cas 65=58 C 539=A I R 1931 Cal 659, see also 33 Bom L R 1364=A I R 1932 Bom 42 Application to revoke leave *is competent 58 C 539=A I R 1931 Cal 659, 35 C W N 930=A I R 1932* Cal 146

13 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have power to remove and to try and determine, as a Court of extraordinary original jurisdiction any suit being or falling within the jurisdiction of any Court, whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceeding of the said High Court.

Extraordinary original civil jurisdiction

14 And We do further ordain that, where plaintiff has several causes of action against a defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several

Joinder of several causes of action

cause, of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit

Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction

15 [And We do further ordain that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal, [illegible] appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one judge of the said High Court or one judge of any Division Court, pursuant to section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one judge of the said High Court or one judge of any Division Court, pursuant to section 108 of the Government of India Act, made on or after the 1st day of February 1929, in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the judge who passed the judgment declares that the case is a fit one for appeal but that the right of appeal from other judgment of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided]*.

Notes —High Court has inherent jurisdiction to appoint guardians 59 C 570= A I R 1932 Cal 502

Appeal from Courts in the Province

16 And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall be a Court of Appeal from the Civil Courts of the Bengal D[illegible] lliam, and from all other C[illegible] appellate jurisdiction in s[illegible] Court by virtue of any laws [illegible] ow in force

Notes —Tribunal is not subject to the superintendence of High Court. 1931 A L J 475=35 C W N 794=33 Bom L. R 1006 High Court of Madras cannot interfere with decision, Board of Revenue Madras Estates Land Act Chap II A I R 1932 Mad 612 (F B)=63 M L J 450=55 M 883 Whether Court is civil Court or not is to be decided by High Court. 55 M 883

Jurisdiction as to infants and lunatics

17 And We do further ordain that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants idiots and lunatics, within the Bengal Division of the Presidency of Fort William, as that which is now vested in the said Supreme Court at Calcutta

Notes —Decision of Judge under s 10, C P Code is judgment 57 B 364=35 Bom L R 15=A I R 1932 Bom 85 Order dismissing petition to adjudge person to be lunatic is not judgment. 35 Bom L R 38=57 B 371=A I R 1933 Bom 11[illegible] Judgment is decision affecting merits of question between parties 34 Bom L R 12=56 B 237=A I R 1932 Bom 134. An order whereby commission to examine witness has been refused is not a judgment A I R. 1934 Bom 168= 36 Bom L R 27[illegible]=15[illegible] Ind Cas 264 But an order whereby stay of suit under s 10 C P Code is refused is a judgment. 61C 670=38 C W N 818 Where solicitor acted for non-existing party an order on motion in suit for recovery of such cos s is appealable 145 Ind Cas 641=35 Bom L R 554=A I R 1933 Bom. 317 Application under clause 15 will be refused unless point in dispute

* Substituted by Letters Patent, 9th December, 1927

is such that the exercise of judicial discretion Court can certify it to be of great public or private importance or unless questions of public importance are *involved or which may be precedent governing numerous other cases* A I R 1932 Bom 218=34 Bom L R 398=138 Ind Cas 454 Order of Judge in chamber refusing leave to sue as pauper is judgment and therefore appeal able 130 Ind Cas 24=32 Bom L R 1647=A I R 1931 Bom 166 Order dis missing petition to set aside award is appealable 55 B 452=32 Bom L R 1650= A I R *1931 Bom 125 It is doubtful whether order in claim case is judgment* 37 C W N 641=60 C 914=A I R 1933 Cal 71 appealable 58 C 342=134 Ind Cas 574=A I R the final decree for mortgage, order to sell without 506=A I R 1933 Cal 504 Appeal under clause *rejecting application under order 40, rule 1 145 Ind* R 1933 Mad 570 (F B) No hard and fast rule c single judge giving decision in second appeal should grant or refuse to grant leave to appeal from his judgment 124 Ind Cas 7=53 M 405=58 M L J 388=1930 M W N 65=A I R 1931 Mad 202 Order ordering respondent in appeal to be s not appealable Mad 417 Where allowed without =A I R 1931 Mad 198

Provison with respect to the Insolvent Court

18 And We do further ordain that the Courts for Relief of insolvent debtors at Calcutta shall be held before one of the judges of the said High Court of Judicature at Fort William in Bengal and the said High Court, and nd exercise, within the Bengal Division uch powers and authorities with respect to otherwise as are constituted by the laws relating to insolvent debtors in India

Notes—High Court cannot adjudge a person who is not resident within its jurisdiction, insolvent 66 M L J *428*=57 M 453=*148 Ind Cas 849*

Law to be administered by the High Court of Judicature at Fort William in Bengal

By the High Court in the exercise of Ordinary Or gi nal Civil Jur sdiction

19 And We do further ordain that with respect to the law or eqnity to be High engal juris law or equity which would have been case if these Letters Patent had not issued

In the exercise of Extra ordinary Original Civil Juris diction

20 And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming *before the said High Court* of Judicature at Fort William in Bengal, in the exercise of its extraordinary original civil jurisdiction such law or equity and rule of good conscience shall (until otherwise provided) be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein

By High Court in the exer cise of appellate Jurisdiction

21 And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the said High Court of Judicature at Fort William in Bengal, to each case coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience, which the Court in which the proceedings in such case were originally instituted ought to have applied to such case

Notes—High Court has no power to grant injunction apart from order 39, C P Code in appeal or revision from mofussil Courts 56 M 663=64 M L J 112=A I R 1933 Mad 500 English Common Law is applicable in original side of the Presidency High Courts 38 C W N 682

Criminal Jurisdiction

Ordinary original jurisdiction of the High Court

22 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction; and also in respect of all such persons both within the limits of the Bengal Division of the Presidency of Fort William, and beyond such limits, and not within the limits of the criminal jurisdiction of any other High Court or Court established by competent Legislative authority for India, as the said High Court of Judicature at Fort William in Bengal, shall have criminal jurisdiction over at the date of the publication of these presents

Jurisdiction as to persons

23 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law

Extraordinary original criminal jurisdiction

24 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate General or by any Magistrate or other officer specially empowered by the Government in that behalf

No appeal from High Court exercising original jurisdiction Court may reserve points of law

25 And We do further ordain that there shall be no appeal to the said High Court of Judicature at Fort William in Bengal, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court

High Court to review on certificate of the Advocate General

26 And We do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate General, that in his judgment there is an error in the decision of a point or points of law, decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction and to pass such judgment and sentence as to the said High Court shall seem right.

Appeals from Criminal Courts in the Provinces

27 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall be a Court of Appeal from the Criminal Courts of the Bengal Division of the Presidency of Fort William, and from all other Courts subject to its superintendence and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force

28 And We do further ordain that the said High Court of Judicature at *Fort William in Bengal, shall be a Court of* reference and revision from the Criminal Courts subject to its appellate jurisdiction and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers now authorized to refer cases to the said High Court, and to revise all such cases tried by any Officer or Court possessing criminal jurisdiction, as are now subject to reference or to revision by, the said High Court

Hearing of referred cases and revision of Criminal trials

29 And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also direct the preliminary investigation or trial of any criminal case by any Officer or Court otherwise competent to investigate or try it, though such case belongs, in ordinary course, to the jurisdiction of some other officer or Court

High Court may direct the transfer of a case from one Court to another

Notes —Under clause 29 High Court can transfer criminal case from one Court to another competent Court in mofussil itself 35 C W N 1082=136 Ind Cas 598=33 Cr L J 322=A I R 1932 Cal 229 Application upon complaint asking High Court to take proceedings against one not in India and others residing within original jurisdiction of High Court does not lie under clause 29 A I R 1932 Cal 123=35 C W N 1088=135 Ind Cas 880

Criminal law.

30 And We do further ordain that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal, either in the exercise of its original jurisdiction or in the exercise of its jurisdiction as a Court of Appeal, reference or revision charged with any offence for which provision is made by Act No XLV of 1860, called the 'Indian Penal Code,' or by any Act, amending or excluding the said Act, which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act, or Acts and not otherwise

Offenders to be punished under Indian Penal Code

Exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court

31 And We do further ordain that whenever it shall appear to the Governor General in Council convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court of Judicature at Fort William in Bengal, should be exercised in any place within the jurisdiction of any Court now ... other than the usual plac ... such places by way of circ ... Court at such place or places shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India

Judges may be authorized to sit in any place or by way of circuit or special commission

Admiralty and Vice Admiralty Jurisdiction

32 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice Admiralty, and also such jurisdiction for the trial and adjudication of prize causes, and other maritime questions arising in India, as may now be exercised by the said High Court.

Civil

Criminal

33 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have and exercise criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty, or of Vice Admiralty or otherwise in connection with maritime matters, or matters of prize

Testamentary and Intestate jurisdiction

Testamentary and intestate jurisdiction

34 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have the like power and authority as that which may now be lawfully exercised by the said High Courts except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty's Letters Patent, in relation to the granting of probates of last Wills and [illegible] of the goods chattels credits and all [illegible] lying intestate, whether within or without the said [illegible] to the order of the Governor General in Council, as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the Provinces or places for which it was established Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probates and letters of administration

Matrimonial Jurisdiction

Matrimonial Jurisdiction

35 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have jurisdiction, within the Bengal Division of the Presidency of Fort William, in matters matrimonial between Our subjects professing the Christian religion Provided always that nothing therein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof

Powers of Single Judges and Division Courts

Single Judges and Division Courts

36 And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Fort William in Bengal in the exercise of its original or appellate jurisdiction may be performed by any Judge or by any Division Court thereof, appointed or constituted [illegible] pursuance of section 108 of the Government of India [illegible] Court is composed of two or more judges, and [illegible]on as to the decision to be given on any point such point shall be decided according [illegible] Judges if there shall be a majority, but if [illegible] they shall state the point upon which [illegible] heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it

Civil Procedure

Regulation of proceedings in civil cases

37 And We do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings

T mentary, Intestate and Matrimonial that the said High Court shall be far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor General in Council, and being Act No VIII of 1859, and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for India

Notes—Order 3, rule, 4 (5) C P Code being contrary to rules under cl 37 latter prevails 35 C W N. 1100=59 C 370=A I R 1932 Cal 1

Criminal Procedure

38 And We do further

Regulation of proceedings in criminal cases

jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immmediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India, and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor General in Council, and being Act No XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid

Appeals to Privy Council

39 And We do further ordain that any person or persons may appeal to Us, Our heirs and successors in Our or Their Privy Council in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the said High Court of Judicature at Fort William in Bengal made on appeal and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or if any Division Court, from which an appeal shall not lie to the said High Court, under the provisions contained in the 15th clause of these presents Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees or that such judgment, decree or order shall involve, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees, or from any other final judgment decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us Our heirs or successors, in Our or Their Privy Council subject always to such rules and orders as are now in force, or may, from time to time be made respecting appeals to Ourselves in Council from the Courts of the said Presidency, except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may with the advice of Our Privy Council, hereafter make in that behalf

Power to appeal

Notes—As Tribunal is not subject to superintendence of High Court no appeal 4 (P C)=58 I A 259 No appeal it in appeal from trial by Court of 34 Ind Cas 544 Leave to appeal to f single Judge of High Court in lause 39 deals with two cases only must be made in exerc se of juris use 15 55 B 785

40 And We do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, at its discretion, on the motion, or if the said High Court be not sitting, then for any Judge of the said High Court upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order or sentence of the High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us Our heirs and successors in Our or Their Privy Council, subject to the same rules, regulations and limitations as are herein expressed respecting appeal from final judgments, decrees, orders and sentences

Appeals from interlocutory Judgment

41 And We do further ordain that, from any judgment, order or sentence of the said High Court of Judicature at Fort William in Bengal, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the persons aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or successors in council, provided the said High Court shall declare that the case is a fit one for such appeal and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf

Appeal in criminal cases, etc,

by [illegible]
Nag [illegible]

42 And We do further ordain that, in all cases of appeal made from any judgment, order, sentence or decree of the said High Court of Judicature at Fort William in Bengal, to Us Our heirs or successors, in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court, and that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a copy of the reasons given by the Judges of such Court, or by any such Judges, for or against the judgment or determination appealed against

Rule as to transmission of copies of evidence and other documents

And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgment and orders as We, Our heirs or successors in Our or Their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court should or might have been executed

Calls for Records, etc, by the Government

43. And it is Our further will and pleasure that the said High Court of Judicature at Fort William in Bengal, shall comply with such requisitions as may be made by the Government for records, returns and statements in such form and manner as such Government may deem proper

High Court to comply with requisition from Government for records, etc

44 And We do further ordain and declare that all the provisions of these Our Letters Patent are subject (to the legislative powers of the Governor General in Legislative Council, and also of the Governor-General in

Powers of the Indian legislature preserved

Council under section 71 of the Government of India Act, 1915, and also of the Governor General in cases of emergency under section 72 of that Act and may be in all respects amended and altered thereby.

Notes —S 51 Emergency powers ordinance 1932, takes away powers of revision under criminal procedure, ss 435, 439 and clause 44 57 B 93=34 Bom L R 1523=57B 93

Provisions of former Letters Patent inconsistent with these Letters Patent to be void

45 And it is Our further will and pleasure that these Letters Patent shall be published by the Governor General in Council and shall come into operation from and after the date

the

them, so much of the aforesaid Lett

George the Third, as was not revoked or determined by the said Letters Patent of the fourteenth of May, one thousand eight hundred and sixty two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever

In witness whereof We have caused there Our Letters to be made Patent, witness Ourselves at Westminster the twenty eight day of December, in the twenty nineth year of Our reign

By warrant under the Queen's Sign Manual

(Sd) C ROMILLY

N B —The Letters Patent of Bombay and Madras are also similarly worded Only in clause 15 of Madras Letters Patent between the words "persuant to section 108 of the Government of India Act, made' and the words "in the exercise of appellate jurisdiction' the words on or after the first day of February, one thousand nine hundred and twenty nine" shall be inserted —*Vide Letters Patent* dated 12th December, 1928

LETTERS PATENT (LAHORE)

Letters Patent constituting the High Court of Judicature at Lahore, for the Provinces of the Punjab and Delhi, dated 21st March, 1919

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the Seas, King, Defender of the Faith Emperor of India To all to whom these presents shall come, greeting Whereas by an Act of Parliament passed in the Fifth and Sixth years of our Reign and called the Government of India Act 1915, it was amongst other things enacted that it should be lawful for Us by Letters Patent to establish a High Court of Judicature in any territory in British India whether or not included within the limits of the local jurisdiction of another High Court and to confer on any High Court so established any such jurisdiction, powers and authority as were vested in or might be conferred on any High Court existing at the commencement of that Act and

whereas the Provinces of the Punjab and Delhi are now subject to the jurisdiction of the Chief Court of the Punjab which was established by an Act of the Governor General of India in Council, being Act No XXIII of 1865, and was continued by later enactments and no part of the said provinces is included within the limits of the local jurisdiction of any High Court

Establishment of High Court at Lahore

1 Now know ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge and mere motion, have thought fit to erect and establish, and by these presents We do accordingly for Us Our heirs and successors, erect and establish for the Provinces of the Punjab and Delhi aforesaid, with effect from the date of the publication of these presents in the *Gazette of India*, a High Court of Judicature, which shall be called the

High Court of Judicature at Lahore, and We do hereby constitute the said Court to be a Court of Record

2 And We do hereby appoint and ordain that the High Court of Judicature at Lahore shall, until further or other provision be made by Us or Our heirs and successors in that behalf in accordance with section one hundred and one of the said recited Government of India Act, 1915 consist of a Chief Justice and six o her Judges, the first Chief Justice being Sir Henry Adolphus Rattigan Knight, and the six other Judges being William Chevis Esquire Henry Scott smith Esquire, Shadi Lal, Esquire, Rai Bahadur Walter Aubin Le Rosignal Esquire, Leycester Hudson Leslie Jones Esquire and Alan Brice Broadway Esquire, being respectively qualified as in the said Act is declared

Constitution and first Judges of the High Court

3 And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Lahore, previously to entering in the execution of the duties of his office shall make and subscribe the following declaration before such authority or person as the Lieutenant (ceive it —

Declaration to be made by Judges

" Judge) of the High Court of Judi will faithfully perform the duties of and judgment

4 And We do hereby grant, ordain and appoint that the High Court of Judicature at Lahore shall have and used as occasion may require a seal bearing a device and impression of Our Royal Arms within an exergue or label surrounding the same with this inscription, '*The seal of the High Court at Lahore*' And We do further delivered to and kept in th *cy of the* office of Chief , the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section 105 of the Government of India Act 1915 and We do further grant ordain and appoint that whensoever the office of Chief aid seal be committed is orized and empowered to or persons whomsoever by what ways and means soever the same may have come to his, her or their possession

Seal

5 And We do hereby further grant, ordain and appoint that all writs summonses precepts, rules orders, and other mandatory process to be used issued or awarded by the High Court of Judicature at Lahore shall run and be in the name and style of Us or of Our heirs and successors and shall be sealed with the seal of the said High Court

Writs etc., to issue in name of the Crown and under seal

6 And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Lahore from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant Governor of the Punjab to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent And it is Our further will and pleasure, and we do hereby, for Us Our heirs and successors give grant direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such

Appointment of officers.

reasonable salaries as the Chief Justice may from time to time appoint for each office and place respectively, and as the Lieutenant Governor of the Punjab, subject to the control, of the Governor General in Council, may approve of Provided always, and it is Our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid and shall be resident within the limits of the jurisdiction of the said Court so long as they hold their respective offices but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor General in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules

Admission of Advocates, Vakils and Attorneys

Powers of High Court in admitting Advocates Vakils and Attorneys

7 And We do hereby authorize and empower the High Court of Judicature at Lahore to approve, admit and enrol such and so many Advocates Vakils and Attorneys as to the said High Court may seem meet, and such Advocates, Vakils and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court and to plead or to act or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions

Powers of High Court in making rules for the qualifications etc, of Advocates Vakils and Attorneys

8 And We do hereby ordain that the High Court of Judicature at Lahore shall have power to make rules from time to time for the qualification and admission of proper persons to be Advocates, Vakils and Attorneys at Law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause the said Advocates, Vakils or Attorneys at Law and no person whatsoever but such Advocates Vakils or Attorneys shall be allowed to act or to plead for, or on behalf of any suitor in the said High Court, except, that any suitor shall be allowed to appear, plead or act on his own behalf or on behalf of a co suitor

Notes — Where legal practitioner was proceeded against under clause 8, he cannot raise plea that High Court should consider merits of his original conviction 14 Lah 532=A I R 1933 Lah 577 (S B)=1933 Cr C 846 Test is that suitors are not exposed to improper persons 143 Ind Cas 737—14 Lah 532=A I R 1933 Lah 577 (S B) Advising his clerk to share property in dispute by advancing money for litigation and appearing free for the litigants amounts to professional misconduct 34 P L R 445=A I R 1932 Lah 584

Civil Jurisdiction of the High Courts

Extraordinary civil jurisdiction

9 And We do further ordain that the High Court of Judicature at Lahore shall have power to remove, and to try and determine as a Court of extraordinary original jurisdiction any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice the reasons for so doing being recorded on the proceedings of the said High Court

Appeal to the High Court from Judges of the Court.

10 [And We do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made

in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pur[illegible] of India Act and that notwithstanding [illegible] shall lie to the said High Court from [illegible] igh Court or one Judge of any Divison Court pursuant to [illegible] Government of India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal, but that the [illegible] from other judgments of Judges of the said High Court or of su[illegible] Our heirs or Successors in Our or Their Privy [illegible]

Notes—Declaration can be given only by Judge who passed judgment 143 Ind Cas 141=34 P L R 489=A I R 1933 Lah 534

11 And We do further ordain that the High Court of Judicature at Lahore shall be a Court of Appeal from the Civil Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India

Appeal from other Civil Courts in the Provinces of the Punjab and Delhi

12 And We do further ordain that the High Court of Judicature at Lahore shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Provinces of the Punjab and Delhi as that which was vested in the Chief Court of the Punjab immediately before the publication of these presents

Jurisdiction as to Infants and Lunatics

Law to be administered by the High Court

13 And We do further ordain that with respect to the law or equity to be applied to each case coming before the High Court of Judicature at Lahore in the exercise of its extraordinary original civil jurisdiction such law or equity shall until otherwise provided be the law or equity which would have been applied to such case by any local Court having jurisdiction therein

By the High Court in the exercise of extraordinary original civil jurisdiction

14 And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Lahore to each case coming before it in the exercise of its appellate jurisdiction such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case

By the High Court in the exercise of appellate jurisdiction

Criminal Jurisdiction

15 And [illegible]

Ordinary orig[illegible] jurisdiction of t[illegible]

[illegible] of the Punjab and Delhi as the Chief Court of

* Substituted by Letters Patent 9th December, 1927

the Punjab had such criminal jurisdiction over immediately before the publication of these presents.

Jurisdiction as to persons

16. And We do further ordain that the High Court of Judicature at Lahore, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law

Extraordinary original criminal jurisdiction

17. And We do further ordain that the High Court of Judicature at Lahore shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf

No appeal from High Court exercising original jurisdiction Court may reserve points of law

18 And We do further ordain that there shall be no appeal to the High Court of Judicature at Lahore from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more judges of the said High Court But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court

High Court to review cases on points of law reserved by one or more judges of the High Court

19 And We do further ordain that, no such point or points of law being so reserved as aforesaid, the High Court of Judicature at Lahore shall have full power and authority to review the case or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right

Appeals from other Criminal Courts in the Provinces of the Punjab and Delhi

20 And We do further ordain that the High Court of Judicature at Lahore shall be a Court of Appeal from the Criminal Courts of the Provinces of the Punjab

jurisdiction in such cases as we

tion of these presents, subje

virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India

Hearing of referred cases, and revision of criminal trials

21 And We do further ordain that the High Court of Judicature at

determine all such cases referred to it by the Sessions Judges, or by any other officers in the Provinces of the Punjab and Delhi who were, immediately before the publication of these presents, authorized to refer cases to the Chief Court of the Punjab and to revise all such cases tried by any officer or Court of the Punjab and Delhi, as

se presents, subject to reference

High Court may direct the transfer of a case from one Court to another

22 And We do further ordain that the High Court of Judicature at Lahore shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation

or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court

Criminal Law

23 And We do further ordain that all persons brought for trial before the High Court of Judicature at Lahore, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal reference or revision charged with any offence for which provision is made by Act No XLV of 1860, called the ' Indian Penal Code", or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act, or Acts, and not otherwise

Offenders to be punished under Indian Penal Code

Testamentary and Intestate Jurisdiction

24 And We do further ordain that the High Court of Judicature at Lahore shall have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the provinces of the Punjab and Delhi by the Chief Court of the Punjab in relation to the granting of probates of last Wills and testaments, and letters of administration of the goods chattels, credits and all other effects whatsoever of persons dying intestate Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration

Testamentary and intestate jurisdiction

Matrimonial Jurisdiction

25 And We do further ordain that the High Court of Judicature at Lahore shall have jurisdiction, within the Provinces of the Punjab and Delhi, in matters matrimonial between Our subjects professing the Christian religion Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Letters Patent within the said Provinces, which is lawfully possessed of that jurisdiction

Matrimonial jurisdiction

Powers of Single Judge and Division Court

26 And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Lahore in the exercise of its Original or Appellate Jurisdiction may be performed by any Judge, or by any Division Court thereof appointed or constituted for such purpose in pursuance of section 108 of the Government of India Act 1915, and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point such point shall be decided according to the opinion of the majority of the Judges if there be a majority, but if the Judges be equally divided, "they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the cases including those who first heard it *

Single Judge and Division Court

Notes—This clause applies in case of difference of opinion between two Judges on question of fact in appeal from lower Court A I R 1933 Lah 648 = 34 P L R 584 = 142 Ind Cas 427 With the addition of sub-section 3, s 98 C P C made by 18 of 1928 this section has no application to cases heard by Division Bench of a

* Substituted by amended Letters Patent, 1927

chartered High Court, whether on appeals from decrees of subordinate Courts or from decrees passed by a Judge of the High Court on the original side All cases of difference of opinion among the judges are governed by this clause A I R 1934 Lah 371

Civil Procedure

27 And We do further ordain that it shall be lawful for the High Court of Judicature at Lahore from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adapting as far as possible the provisions of the Code of Civil procedure, being an Act No V of 1908, passed by the Governor General in Council and the provision of any law which has been or may be made, amending or altering the same by competent legislative authority for India to all proceedings in its testamentary, intestate and matrimonial jurisdiction respectively

Regulation of proceedings

Criminal Procedure

28 And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Lahore shall be regulated by the Code of Criminal Procedure, being an Act No V of 1898, passed by the Governor General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by competent legislative authority for India

Regulation of proceedings

Appeals to Privy Council

29 And We do further ordain that any person or persons may appeal to Us Our heirs and successors, in Our or Their Privy Council in any matter not being of Criminal Jurisdiction from any final judgment decree or order of the High Court of Judicature at Lahore made on appeal and from any final judgment, decree or order made in the exercise of original jurisdiction by judges of the said High Court or of any Division Court from which an appeal does not lie to the said High Court under the provisions contained in the 10th clause of these presents Provided in either case that the sum or matter at issue is of the amount or value of not less than 10 000 rupees or that such judgment, decree or order involves directly or indirectly, some claim demand or question to or respecting property amounting to or of the value of not less than 10 000 rupees or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid when the said High Court declares that the case is a fit one for appeal to Us Our heirs or successors in Our or Their Privy Council, but subject always to such rules and orders as are now in force, or may from time to time be made respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi, except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may with the advice of Our Privy Council hereafter make in that behalf

Power to appeal in Civil Cases

30 And We do further ordain that it shall be lawful for the High Court of Judicature at Lahore at its discretion on the motion or if the said High Court be not sitting then for any judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court in any such proceedings as aforesaid, not being of criminal jurisdiction to grant permission to such party to appeal against the same to Us Our heirs and successors in Our or Their Privy Council, subject to the same rules regulations and limitations as are herein expressed respecting appeals from final judgments decrees and orders

Appeal from interlocutory judgments

Appeal in criminal cases

31 And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Lahore, made in the exercise of original criminal jurisdiction or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents by any Court which has exercised original jurisdiction, it ... by such judgment, order or sentence to ... Council, provided the said High Court ... ch appeal, and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi

Rules as to transmission of copies of evidence and other documents

32 And We do further ordain that, in all cases of appeal made from any judgment, decree order or sentence of the High Court of Judicature at Lahore to Us, Our heirs or successors in Our or Their Privy Council, such High Court shall certify and transmit to Us Our heirs and successors in Our or Their Privy Council, a true and correct copy of all evidence, proceedings, judgments decrees and orders had, or made, in such cases appealed so far as the same have relation to the matters of appeal such copies to be certified under the seal of the said High Court And that the said High Court shall also certify and transmit to Us, Our heirs and successors in Our or Their Privy Council a copy of the reasons given by the Judges of such Court or by any of such Judges for or against the judgment or determination appealed against And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors in Our or Their Privy Council, may think fit to make in the premises, in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed

Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court

Special commissions and circuits

33 And We do further ordain that, whenever it appears to the Lieutenant-Governor of the Punjab, subject to the control of ... Council, convenient that ... by these Our Letters Patent, or by or under ... 15, vested in the High Court of Judicature at L... exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more judges of the Courts shall visit such place or places accordingly

Proceedings ... special commissions

34 And ... judges of the ... fore visit any ... presents, the place shall be ... them at such ... relating thereto which has been or may be made by competent legislative authority for India

Delegation of duties to Officers.

Power to delegate duties

35 The High Court of Judicature at Lahore may from time to time make rules for delegating to any Registrar, Prothonotary or Master or other official of the Court any judicial, quasi judicial and non-judicial duties

Calls for records, etc by the Government

36 And it is Our further will and pleasure that the High Court of Judicature at Lahore shall comply with such requisitions as may be made by the Governor General in Council or by the Lieutenant Governor of the Punjab for records returns and statements, in such form and manner as he may deem proper

High Court to comply with requisitions from Government for records, etc

Powers of Indian Legislatures

37 And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the Legislative powers of the Governor General in Legislative Council and also of the Governor General in Council under section seventy one of the Government of India Act 1915, and also of the Governor General in cases of emergency under section seventy two of that Act and may be in all respects amended and altered thereby

Powers of Indian Legislatures preserved

In witness whereof We have caused these Our Letters to be made Patent Witness Ourself at Westminster the 21st day of March in the year of Our Lord one thousand nine hundred and nineteen and in the ninth year of Our reign

By warrant under the King s Sign Manual

(Sd) SCHUSTER

LETTERS PATENT (NAGPUR).

2nd January 1936

George the Fifth by the Grace of God of Great Britain Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India

To all to whom these Presents shall come greeting

WHEREAS in the Government of India Act, it was amongst other things enacted that it should be lawful for Us by Letters Patent to establish a High Court of Judicature in any territory in British India whether or not included within the limits of the local jurisdiction of another High Court and to confer on any High Court so established any such jurisdiction powers and authority as were vested in or might be conferred on any High Court existing at the commencement of that Act

AND WHEREAS the Province known as the Central Provinces is now subject to the jurisdiction of the Court of the Judicial Commissioner of the Central Provinces which was established by an Act of the Governor General of India in Council being Act No XIV of 1865 and was continued by later enactments and no part of the said province is included within the limits of the local jurisdiction of any High Court

1 Now know ye that We upon full consideration of the premises, and of Our special grace certain knowledge and mere motion have thought fit to erect and establish and by these presents We do accordingly for Us Our heirs and successors erect and establish, for the Central Provinces aforesaid with effect from the date of the publication of these presents in the *Gazette of India* a High Court of Judicature which shall be called the High Court of Judicature at Nagpur, and We do hereby constitute the said Court to be a Court of Record

Establishment of a High Court at Nagpur

2 And We do hereby appoint and ordain that the High Court of Judicature at Nagpur shall, until further or other provision be made by Us or Our heirs and successors, in that behalf in accordance with

Constitution and the first Judges of the High Court

11 And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of Appeal from the Civil Courts of the Central Provinces and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Court of the Judicial Commissioner of the Central Provinces by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Nagpur by any law made by competent legislative authority for India

Appeal from other Civil Courts in the Central Provinces

12 And We do further ordain that the High Court of Judicature at Nagpur shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Central Provinces as that which was vested in the Court of the Judicial Commissioner of the Central Provinces immediately before the publication of these presents

Jurisdiction as to infants and lunatics

Law to be administered by the High Court.

13 And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming before the High Court of Judicature at Nagpur in the exercise of its extraordinary original civil jurisdiction such law or equity and r[illegible]herwise provided, be the law or equity and [illegible]d have been applied to such case by any

By the High Court in the exercise of extraordinary original civil jurisdiction

14. And We do further ordain that with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Nagpur to each case coming before it in the exercise of its appellate jurisdiction such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case

By the High Court in the exercise of appellate jurisdiction.

Criminal jurisdiction of the High Court

15 And We do further ordain that the High Court of Judicature at Nagpur shall have ordinary original criminal jurisdiction in respect of all such persons within the Central Provinces as the Court of the Judicial Commissioner of the Central Provinces had such criminal jurisdiction over immediately before the publication of these presents

Ordinary original criminal jurisdiction of the High Court

16 And We do further ordain that the High Court of Judicature at Nagpur, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law

Jurisdiction as to persons

17 And We do further ordain that the High Court of Judicature at Nagpur shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.

Extraordinary original criminal jurisdiction.

No appeal from High Court exercising original jurisdiction Court may reserve points of law

18 And We do further ordain that there shall be no appeal to the High Court of Judicature at Nagpur from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court

High Court to review cases on points of law reserved by one or more Judges of the High Court.

19 And We do further ordain that on such point or points of law being so reserved as aforesaid the High Court of Judicature at Nagpur shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction and to pass such judgment and sentence as to the said High Court may seem right

Appeals from other Criminal courts in the Central Provinces

20 And We do further [illegible] re at Nag- [illegible] Criminal [illegible] from all other Courts subject to its superintendence, and [illegible] ch cases as were, [illegible] subject to appea [illegible] rovinces by virtue of any law then in force or as may after that date be declared subject to appeal to the High Court of Judicature at Nagpur by any law made by competent legislative authority for India

Hearing of referred cases and revision of criminal trials

21 And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers in the Central Provinces who were immediately before the publication of these presents authorized to refer cases to the Court of the Judicial Commissioner of the Central Provinces and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Central Provinces, as were, immediately before the publication of these presents subject to reference to or revision by the Court of the Judicial Commissioner of the Central Provinces

High Court may direct the transfer of a case from one Court to another

22 And We do further ordain that the High Court of Judicature at Nagpur shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it though such case belongs in ordinary course to the jurisdiction of some other officer or Court

Criminal Law

Offenders to be punished under Indian Penal Code

23 And We do further ordain that all persons brought for trial before the High Court of Judicature at Nagpur, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision charged with any offence for which provision is made by Act No XLV of 1860 called the Indian Penal Code, or by any Act

amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise

Testamentary and Intestate Jurisdiction

Testamentary and intestate jurisdiction

24 And We do further ordain that the High Court of Judicature at Nagpur shall have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the Central Provinces by the Court of the Judicial Commissioner of the Central Provinces in relation to the granting of probates of last wills and testaments and letters of administration of the goods chattels credits and all other effects whatsoever of persons dying intestate Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India, by which power is given to any other Court to grant such probates and letters of administration

Matrimonial Jurisdiction

Matrimonial jurisdiction

25 And We do further ordain that the High Court of Judicature at Nagpur shall have jurisdiction within the Central Provinces in matters matrimonial between Our subjects professing the Christian religion

Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court, not established by Letters Patent within the said Province, which is lawfully possessed of that jurisdiction

Powers of Single Judges and Division Courts

Single Judges and Division Courts

26 And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Nagpur in the exercise of its original or appellate jurisdiction may be performed by any Judge or by any Division Court, thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges if there be a majority, but if the Judges be equally divided they shall state the point on which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it

Civil Procedure

Regulation of proceedings

27 And We do further ordain that it shall be lawful for the High Court of Judicature at Nagpur from time to time to make rules and orders for regulating the practice of the Court and for the purpose of adapting as far as possible the provisions of the Code of C[illegible] No V of 1908, passed by the Governor [illegible] any law which has been made or may be made, [illegible]petent legislative authority for India, to [illegible] proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively

Criminal Procedure

Regulation of proceedings

28 And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Nagpur shall be regulated by the Code of

Criminal Procedure, being an Act, No V of 1898, passed by the Governor General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by competent legislative authority for India

Appeals to Privy Council

Power to appeal in civil cases

29 And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction, from any final judgment, decree or order of the High Court of Judicature at Nagpur made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court from which an appeal does not lie to the said High Court under the provisions contained in the tenth clause of these presents

Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10 000 rupees, or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees, or from any other final judgment, decree or order made either on appeal or otherwise aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our heirs or successors, in Our or Their Privy Council, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Central Provinces except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf

Appeal from interlocutory judgments

30 And We do further ordain that it shall be lawful for the High Court of Judicature at Nagpur at its discretion on the motion, or, if the said High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment decree or order of the said High Court, in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders

Appeal in criminal cases

31. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Nagpur, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 28th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the persons aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or successors in Council, provided that the said High Court declares that the case is a fit one for such appeal and that the appeal be made under such conditions as the said High Court may establish or require but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Central Provinces.

Rules as to transmission of copies of evidence and other documents

32 And We do further orc

... Our heirs or successors in Our or Their Privy Council a true and correct ... d orders had or made, ... the matters of appeal, such copies to be certified under the Seal of the said High Court And that the said High Court shall also certify and transmit to Us Our heirs and successors in Our or Their Privy Council, a copy of the reasons given by the Judges of such Court or by any of such Judges for or against the judgment or determintion appealed against And We do further ordain that the said High Court shall, in all cases of appeal to Us Our heirs or successors, conform to and execute or cause to be executed such judgments and orders as We, Our heirs or successors, in Our or Their Privy Council, may think fit to make in the premises in such manner as any original judgment, decree or decretal orders or other order or rule of the said High Court, should or might have been executed

Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court

Special commissions and circuits

33 And We do further ordain that whenever it appears to the Governor in Council of the Central Provinces subject to the control of the Governor General in Council convenient that the jurisdiction and power by these Our Letters Patent or by or under the Government of India Act vested in the High Court of Judicature at Nagpur should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court or at several such places by way of circuit one or more Judges of the Court shall visit such place or places accordingly

Proceedings of Judges on special commissions or circuit.

34 And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Nagpur visit any place under the 33rd clause of these presents the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which *has been or* may be made by competent legislative authority for India

Provisions regarding pending proceedings

35 And ...
reviews exec...
before the ...
ssioner of the Central Provinces in the exercise of any jurisdiction vested in it by ... shall ...
... gh Court of Judicature
... High Court, and the
... s exercise the jurisdic...

Delegation of duties to Officers

Powers to delegate duties

36 The High Court of Judicature at Nagpur may from time to time make rules for delegating to any Registrar, Prothonotary, or Master or other official of the Court any judicial quasi judicial and non judicial duties

Calls for records, etc, by the Government

High Court to comply with requisitions from Government for records &c

37 And it is Our further will and pleasure that the High Court of Judicature at Nagpur shall comply with such requisitions as may be made by the Governor General in Council or by the *Governor in Council* of the Central Provinces for records returns and ... in such form and manner as he may deem proper

Powers of Indian Legislatures

Powers of Indian Legislatures preserved

38 And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the local legislature and of the Indian legislature, and also of the Governor General in Council under section seventy one of the Government of India Act, and also of the Governor General under section seventy two of that Act, and may be in all respects amended and altered thereby

In Witness whereof We have caused these Our Letters to be made Patent

Witness Ourself at Westminster the 2nd day of January in the year of Our Lord one thousand nine hundred and thirty six and in the Twenty sixth Year of Our Reign

[Signed] SCHUSTER

By Warrant under the King's Sign Manual

LETTERS PATENT (PATNA)

Letters Patent constituting the Hi h Court of Judicature at Patna, dated the 9th February, 1916

Recital of Act 24 and 25 Vict c 104

George The Fifth, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India To all to whom these presents shall come, greeting Whereas by an Act of Parliament passed in the Twenty fourth and Twenty fifth years of the Reign of Her late Majesty Queen Victoria, and called the Indian High Courts Act, 1861, it was amongst other things, enacted, by section one, that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom to erect and establish a ... William in Bengal, for the Bengal Division of ... and by ... should consist of a Chief Justice and as many ... Her Majesty might from time to time think fit to appoint, who should be selected from among persons qualified as in the said Act was declared,

and, by section eight that upon the establishment of such High Court as aforesaid the Supreme Court and the Court of Sadar Diwani Adalat and Sadar Nizamat Adalat at Calcutta in the said Presidency should be abolished

and, by section nine that the High Court of Judicature so to be established should have and exercise all such civil criminal, admiralty and vice admiralty, testamentary, intestate and matrimonial jurisdiction original and appellate and all such powers and authority for and in relation to the administration of justice in the said Presidency, as Her Majesty might by such Letters Patent as aforesaid grant and direct, subject, however to such directions and limitations, as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency town, as might be prescribed thereby, and that save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the ... the matters aforesaid of the Governor Gener... Court so to be established should have an... every power and authority whatsoever in an... urts in the same Presidency abolished under ...olition of such last mentioned Courts

And whereas it was further declared by section sixteen of the said recited Act that it should be lawful for Us by Letters Patent to erect and establish a

High Court of Judicature in and for any portion of territories within Our Dominions in India, not included within the limits of the local jurisdiction of another High Court to consist of a Chief Justice and such number of other Judges, with such qualifications as were by the same Act required in persons to be appointed to the High Courts established at the Presidencies of Fort William in Bengal, of Madras, and of Bombay, as We from time to time might think fit and appoint, and that it should be lawful for Us, by such Letters Patent, to confer on any new High Court which might be so established any such jurisdiction, powers and authority as under the same Act was authorised to be conferred on or would become vested in the High Court established in any of the said Presidencies, and that subject to the directions of the Letters Patent, all the provisions of the said recited Act relative to High Courts and to the Chief Justice and other Judges of such Co[illegible] Governor of the Presidency in which such [illegible] as far as circumstances might permit, [illegible] which might be established in the said ter[illegible] other Judges thereof, and to the Persons a[illegible] said territories

Recital of establishment of High Courts at Fort William and Allahabad

And whereas, upon full consideration of the premises, Her late Majesty Queen Victoria, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the Fourteenth day of May, in the Twenty fifth Year of Her Reign, in the Year of Our Lord One th[illegible] sixty two, did erect and es[illegible] in Bengal for the Bengal [illegible] and did constitute that Court to be a Court of Record

And whereas Her late Majesty Queen Victoria by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the twenty eighth day of December, in the Twenty ninth Year of Her Reign, in the Year of Our Lord One thousand eight hundred and sixty-five did revoke the said Letters Patent bearing date the Fourteenth day of May in the year of Our Lord One thousand eight hundred and sixty two, but notwithstanding that revocation did continue the said High Court of Judicature at Fort William in Bengal and declared that the Court should continue to be a Court of Record

And whereas upon full consideration of the premises, Her late Majesty Queen Victoria by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the seventeenth day of March, in the twenty ninth year of Her Reign, in the year of Our Lord one [illegible] erect and establish a High Court of [illegible]es, which the said Court is situated [illegible]l is now called the High Court of [illegible] that Court to be a Court of Record:

Recital of Act 1 & 2 Geo 5 c 18

And whereas by an Act of Parliament passed in the First and Second Years of Our Reign, and called the Indian High Courts Act, 1911, it was enacted, amongst other things, by section one that the maximum number of Judges of a High Court of Judicature in India including the Chief Justice should be twenty,

and, by section two that Our power under section sixteen of the Indian High Courts Act, 1861, might be exercised from time to time and that a High Court might be establ[illegible] [illegible]ction sixteen in any portion of the terri[illegible] whether or not included within the limits [illegible] High Court and that, where such a High Court was established in any part of such territories included within the limits

of the local jurisdiction of another High Court, it should be lawful for Us by Letters Patent to alter the local jurisdiction of that other High Court, and to make such incidental, consequential and supplemental provisions as might appear to be necessary by reason of the alteration of those limits:

Recital of Act 5 & 6 Geo 5 c. 61

And whereas the said Indian High Courts Acts, 1861 and 1911, have been repealed and re enacted by an act of Parliament passed in the Fifth and Sixth Years of Our Reign and called the Government of India. Act, 1915 ·

Recital of creation of Province of Bihar and Orissa

And whereas certain territories formerly subject to and included within the limits of the Presidency of Fort William in Bengal were, by Proclamation made by the Governor General of India on the Twenty-second day of March in the year of Our Lord One thousand nine hundred and twelve, constituted a separate Province, called the Province of Bihar and Orissa, and are now governed by a Lieutenant Governor in Council

Establishment of High Court at Patna

1. Now know Ye that We, upon full consideration of the premises, and of Our special grace, certain knowledge and mere motion, have thought fit to erect and establish, and by these presents We do accordingly for Us, [illegible] ...ect and establish, for the province of Bihar and Orissa [illegible] the publication of these presents in the [illegible] of Judicature, which shall be called [illegible] tna and We do hereby constitute the sa[illegible]

Constitution and first judges of the High Court

2 And We do hereby appoint and ordain that the High Court of Judicature at Patna shall, until further or other provision be made by Us or Our heirs and successors, in that behalf in accordance with section One hundred and one of the said recited Government of India Act, 1915, consist of a Chief Justice and six other Judges the first Chief Justice being Sir Edward Maynard Des Champs Chamier, Knight, and the six other Judges being Saiyid Shurf ud din, Esquire, Edmund Pelly Chapman, Esquire, Basanta Kumar Mullick, Esquire, Fancis Reginald Roe, Esquire, the Hon ble Cecil Atkinson, and Jowala Persad, Esquire, being respectively qualified as in the said Act is declared

Declarations to be made by Judges

3 And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Patna previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Lieutenant Governor in Council may commission to receive it —

"I *A B*, appointed Chief Justice (*or* a Judge) of the High Court of Judicature at Patna, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment '

[illegible] ...ent that the High Court of

[illegible]

kept in the custody of the person appointed to act as Chief Justice under the provisions of section one hundred and five of the Government of India Act, 1915;

... further grant, ordain and appoint that, whensoever the office of ... committed ... empowered ... whomsoever, ... her or their ... possession

5 And We do hereby further grant, ordain and appoint that all writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded by the High Court of Judicature at Patna shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court

Writs, etc to issue in name of the Crown and under Seal

6. And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Patna from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed from time to time by the Lieutenant Governor in Council to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent And We do hereby ... such appointment shall be forthwith submitted to the appro- ... ouncil and shall be either confirmed or ... in Council And it is our further will and pleasure, and We do hereby, for Us Our heirs and successors, give, grant, direct and appoint, that all and every the officers and clerks to be appointed as afore ... the Chief ... res pective ... rol of the Go ... and it is Our ... ppoin ted as ... of the said Court, so long as they hold their respective offices, but this proviso shall not interfere with or prejudice the right of any officer or clerk to avail himself of leave of absence under any rules prescribed from time to time by the Governor General in Council, and to absent himself from the said limits during the term of such leave in accordance with the said rules

Appointment of officers

Admission of Advocate , Vakils and Attorneys

... directions

8. And We do hereby ordain that the High Court of Judicature at Patna shall have power to make rules from time to time for the qualification and admission of ... ble cause, the said Advocates, V ... but such Advocates, Vakils or ...

Powers of High Court in making rules for the qualification etc of Advocates Vakils and Attorneys

or on behalf of, any suitor in the said High Court, except that any suitor shall be allowed to appear plead or act on his own behalf or on behalf of a co suitor

Civil Jurisdiction of the High Court

Extraordinary original Civil Jurisdiction

9 And We do further ordain that the High Court of Judicature at Patna shall have power to remove and to try and determine as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so either on the agreement of the parties to that effect, or for purposes of justice the reasons for so doing being recorded on the proceedings of the said High Court

Notes—In case of removal of suits from subordinate Judges' Court to High Court non recording of reasons is only irregularity 14 P L T 258=12 Pat 727=A I R 1933 Pat 250

Appeal from Judges of the Court to the High Court

10 [And We do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act or in the exercise of criminal (jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to section 108 of the Government of India Act, and ' ' reinbefore provided an appeal shall lie to the of one Judge of the said High Court or one ; uant to section 108 of the Government of India Act made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the judgment declares that the case is a fit one for appeal but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided]*

Notes—No appeal lies to Divisional Court from decision of single Judge passed in revision 133 Ind Cas 676=10 Pat 428=12 P L T 599=A I R 1931 Pat 292 Which has been called for by the said Court cover cases called for whether *suo motu* or on application by party *Ibid* Order refusing to exercise jurisdiction under s 151 is not judgment 12 Pat 222=14 P L T 1=A I R 1933 Pat 139 As regards when leave to appeal should be granted, *Vide* A I R 1934 Pat 461=15 P L T 456=13 Pat 587

Appeal from other Civil Courts in the Province of Bihar and Orissa

11 And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Civil Courts of the Province of Bihar and Orissa and from all other Courts subject to its superintendence and shall exercise appellate jurisdiction ' ' before the date of the publication of these t of Judicature at Fort William in as may after that date be declared ature at Patna by any law made

*Substituted by Letters Patent, 9th December 1927

Jurisdiction as to Infant, and Lunatics

12 And We do further ordain that the High Court of Judicature at Patna shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Province of *Bihar* and Orissa as that which was vested in the High Court of Judicature at Fort *William in* Bengal immediately before the publication of these presents

Law to be administered by the High Court

By the High Court in the exercise of extraordinary original civil jurisdiction

13 And We do further ordain that, with respect to the law or equity to be applied to each case coming before the High Court of Judicature at Patna in the exercise of its extraordinary original civil jurisdiction, such law or equity shall until otherwise provided, be the law or equity or which would have been applied to such case by any local Court having jurisdiction therein

By the High Court in the exercise of appellate jurisdiction

14 And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Patna to each case coming before it in the exercise of its appellate jurisdiction such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case

Criminal Jurisdiction

Ordinary original criminal jurisdiction of the High Court

15 And We do further ordain that the High Court of Judicature at Patna shall have ordinary original *criminal jurisdiction* in respect of all such persons within the Province of Bihar and Orissa as the High Court of Judicature at Fort William in Bengal had such *criminal jurisdiction over* immediately before the publication of these presents

Jurisdiction as to persons

16. And We do further ordain that the High Court of Judicature at Patna, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law

Extraord nary original crimi

17 And We do further ordain that the High Court of Judicature at Patna

any such persons brought other officer specially empowered by the Government in that behalf

No appeal from High Court exercising original jurisdiction Court may reserve points of law

18 And We do further ordain that there shall be no appeal to the High Court of Judicature at Patna from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be *constituted* by *one* or more Judges of the said High Court *But it shall be* at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court

High Court to re on points of law reserved by one or more Judges of the High Court

19 And We

points of law being High Court of Judi full power and authority to review the case, or such part of it as may be necessary and finally determine such point or points of law, and thereupon to alter the sen

tence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right

20 And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Criminal Courts of the Province of Bihar and Orissa and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India

Appeals from other Criminal Courts in the province of Bihar and Orissa

21 And We do further ordain that the High Court of Judicature at Patna shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers in the Province of Bihar and Orissa, who were, immediately before the publication of these presents, authorized to refer cases to the High Court of Judicature at Fort William in Bengal, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Province of Bihar and Orissa, as were immediately before the publication of these presents subject to reference to or revision by the High Court of Judicature at Fort William in Bengal

Hearing of referred cases, and revision of criminal trials

22 And We do further ordain that the High Court of Judicature at Patna shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it though such case belongs in ordinary course to the jurisdiction of some other officer or Court

High Court *may direct the* transfer of a case from one Court to another

Criminal Law

23 And We do further ordain that all persons brought for trial before the High Court of Judicature at Patna, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision charged with any offence for which provision is made by Act No XLV of 1860 called the "Indian Penal Code, or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise

Offenders to be punished under Indian Penal Code

Admiralty Jurisdiction

24 And We further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa, all such civil and maritime jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions as was so exercisable by the High Court of Judicature at Fort William in Bengal

Civil

25 And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the Province of Bihar and Orissa all such criminal jurisdiction

Criminal

as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty, or otherwise in connection with maritime matters or matters of prize

Testamentary and Intestate Jurisdiction

26 And We do further ordain that the High Court of Judicature at Patna shall have the like power and authority as that which was immediately before the publication of these presents lawfully exercised within the Province of Bihar and Orissa by the High Court of Judicature at Fort William in Bengal in relation to the granting of probates of last Wills and testaments and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probates and letters of administration

Testamentary and intestate jurisdiction

Matrimonial Jurisdiction

27 And We do further ordain that the High Court of Judicature at Patna shall have jurisdiction within the Province of Bihar and Orissa in matters matrimonial between Our subjects professing the Christian religion Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Letters Patent within the said Province which is lawfully possessed of that jurisdiction

Matrimonial jurisdiction

Powers of Single Judges and Division Courts

28 And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Patna in the exercise of its original or appellate jurisdiction may be performed by any Judge, or by any Division Court thereof appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act 1915, and if such Division Court is composed of two or more Judges and the Judges are divided in [illegible] any point, such point shall be decided [illegible] of the Judges if there be a majority, b[illegible] shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of judges who have heard the case including those who first heard it] *

Single Judges and Division Courts

Notes—Under clause 28 single Judge is competent to hear reference 141 Ind Cas 369=11 Pat 772=14 P L T 374=A I R 1933 Pat. 67 In case of difference between two judges on appeal from subordinate Court reference under clause 28 *is competent S 98 C P Code has no application* 11 Pat 772=14 P L T 374=A I R 1933 Pat 67

Civil Procedure

29 And We do further ordain that it shall be lawful for the High Court of [illegible] rul[illegible] the Court and for the purpose o[illegible] the Code of Civil Procedure [illegible] Governor General in Council, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative

Regulation of proceedings

* Substituted by Letters Patent of 1927

authority for India to all proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively

Criminal Procedure

30 And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Patna in the exercise of its ordinary original criminal jurisdiction shall be regulated by the procedure and practice which was in use in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India, and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Proceedure, being an Act No V of 1898 passed by the Governor General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid

Regulation of proceedings

Appeals to Privy Council

31 And We do further ordain that any person or persons may appeal to Us, Our heirs and successors in Our or Their Privy Council, in any matter not being of criminal jurisdiction from any final judgment, decree or order of the High Court of Judicature at Patna made on appeal and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court or of any Division Court, from which an appeal does not lie to the said High Court under the provisions contained in the 10th clause of these presents: Provided, in either case that the sum or matter at issue is of the amount or value of not less than 10 000 rupees or that such judgment decree or order involves directly or indirectly, some claim demand or question to or respecting property amounting to or of the value of not less than 10 000 rupees, or from any other final judgment decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us Our heirs or successors in Our or Their Privy Council, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa except so far as the said existing rules and orders respectively are hereby varied and subject also to such further rules and orders as We may with the advice of Our Privy Council, hereafter make in that behalf

Power to appeal in Civil Cases

32 And We do further ordain that it shall be lawful for the High Court of Judicature at Patna at its discretion, on the motion, or if the said High Court be not sitting then for any Judge of the said High Court upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment decree or order of the said High Court in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us Our heirs and successors in Our or Their Privy Council subject to the same rules regulations and limitations as are herein expressed respecting appeals from final judgments decrees and orders

Appeal from interlocutory judgments.

33 And We do further ordain that from any judgment order or sentence of the High Court of Judicature at Patna made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction it shall be lawful for the person aggrieved by such judgment order or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court declares

Appeal in Criminal cases

that the case is a fit one for such appeal and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa.

Rule as to transmission of copies of evidence and other documents

34 And We do further ordain that, in all cases of appeal made from any judgment, decree, order or sentence of the High Court of Judicature at Patna to Us, Our heirs or successors, in Our or Their privy Council, such High Court shall certify and transmit to Us Our heirs and successors in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees and orders had or made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a copy of the reasons given by the judges of the said High Court, or by any such judges, for or against the judgment or determination appealed against And We do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We, Our heirs or successors, in Our or Their Privy Council, may think fit to make in the premises, in such manner as any original judgment, decree or decretal orders, or other order or rule of the said High Court, should or might have been executed

Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court.

Judges to visit Orissa by way of circuit

35 And We do further ordain that, unless the Governor General in Council otherwise directs, one or more Judges of the High Court of Judicature at Patna shall visit the Division of Orissa, by way of circuit, whenever the Chief Justice from time to time appoints, in order to exercise in respect of cases arising in that Division the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the said High Court Provided always that such visits shall be made not less than four times in every year unless the Chief Justice, with the approval of the [illegible] otherwise directs: Provided also that [illegible] time to time to make rules, with [illegible] Governor in Council, for declaring what cases or classes of cases arising in the Division of Orissa shall be heard at Patna and not in that Division, and that the Chief Justice may, in his discretion, order that any particular case arising in the Division of Orissa shall be heard at Patna or in that Division

Notes—Vacation Judge cannot hear revisional application at Patna which should be heard at Orissa 130 Ind Cas 262=11 P L T. 862=A I R 1931 Pat 61

Special commission and circuits

36 And We do further ordain that whenever it appears to the Lieutenant-Governor in Council, subject to the control of the Governor General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, 1915, vested in the High Court of Judicature at Patna should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court, other than the usual place of sitting of the said High Court, or at several such places by way of circuit, one or more Judges of the Court shall visit such place or places accordingly.

37 And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Patna visit any place under the 35th or the 36th clause of these presents the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India

Proceedings of Judges on special commission or circuit

Delegation of Duties to Officers

38. The High Court of Judicature at Patna may from time to time make rules for delegating to any Registrar, Prothonotary or Master or other Official of the Court any judicial, quasi judicial and non judicial duties

Power to delegate duties

Cessation of Jurisdiction of the High Court of Judicature at Fort William in Bengal

39 And We do further ordain that the jurisdiction of the High Court of Judicature at Fort William in Bengal in any matter in which jurisdiction is by these presents given to the High Court of Judicature at Patna shall cease from the date of the publication of these presents, and that all proceedings pending in the former Court on that date in reference to any such matter shall be transferred to the latter Court

Cessation of jurisdiction of the High Court of Judicature at Fort William over the Province of Bihar and Orissa

Provided, first, that the High Court of Judicature at Fort William in Bengal shall continue to exercise jurisdiction—

(*a*) in all proceedings pending in that Court on the date of the publication of these presents in which any decree or order, other than an order of an interlocutory nature, has been passed or made by that Court, or in which the validity of any such decree or order is directly in question, and

(*b*) in all proceedings [not being proceedings referred to in paragraph (a) of this clause] pending in that Court, on the date of the publication of these presents, under the 13th, 15th 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 32nd, 33rd, 34th, or 35th, clause of the Letters Patent bearing date at Westminster the twenty eighth day of December, in the Year of Our Lord One thousand eight hundred and sixty five, relating to that Court, and

(*c*) in all proceedings instituted in that Court, on or after the date of the publication of these presents with reference to any decree or order passed or made by that Court

Provided secondly that if any question arises as to whether any case is covered by the first proviso to this clause the matter shall be referred to the Chief Justice of the High Court of Judicature at Fort William in Bengal, and his decision shall be final

Calls for Records, etc, by the Government

40 And it is Our further will and pleasure that the High Court of Judicature at Patna shall comply with such requisitions as may be made by the Lieutenant Governor in Council for records, returns and statements, in such form and manner as he may deem proper

High Court to comply with requisitions from Government for records etc

Powers of Indian Legislatures

41 And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative power of the Governor General in Legislative Council and also of the Governor General in Council under section Seventy one of the Government of India Act, 1915, and

Powers of Indian Legislatures preserved

also of the Governor General in cases of emergency under section seventy two of that Act and may be in all respects amended and altered thereby

In witness whereof We have caused these Our Letters to be made Patent Witness Ourselves at Westminster the Ninth day of February in the year of Our Lord one thousand nine hundred and sixteen and in the sixth year of Our reign

By warrant under the King s Sign Manual

(Sd) SCHUSTER

LETTERS PATENT FOR THE HIGH COURT OF RANGOON

[*11th November, 1922*]

George the Fifth, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith Emperor of India

To all to whom these presents shall come greeting

Whereas in the Government of Indi ... things enacted that it should be lawful for Us ... High Court of Judicature in any territory in B ... cluded within the limits of the local jurisdiction of another High Court and to confer o any High Court so established any such jurisdiction powers and authority as were vested in or might be conferred on any High Court existing at the commencement of that Act

And whereas that portion of the Province of Burma known as Lower Burma is now within the limits of the jurisdiction of the Chief Court of Lower Burma which was established by an Act of the Governor General of India in Legislative Council being Act No VI of 1900 and whereas that portion of the said Province known as Upper ... now within the limits of the jurisdiction of the ... Burma appointed in pursuance of a Regulatic ... India in Council b in Regulation No V of 1892 and of the Court of the Judicial Commissioner of Upper Burma which was established by a Regulation of the Governor General of India in Council being Regulation No VIII of 18 6 and was continued by a Re ulation of the Governor General of India in Council being Regulation No 1 of 1896

And whereas no part of the said Province is included within the limits of the Local Jurisdiction of any High Court

Establishment of High Court at Rangoon

1 *Now know ye that* We upon full consideration of the premises and of Our special grace, certain knowledge and mere motion have thought fit to erect and establish, and by these presents We do accordingly *for Us*, Our heirs and successors erect and establish, for those portions *of the Province* of Burma at present within the limits of the jurisdiction of the said Chief Court of Lower Burma and of the said Judicial Commissioner and of the said C ... f Upper Burma as aforesaid ... presents in the *Gazette of* ... be called the High Court of Judicature at Rangoon and We do hereby constitute the said Court to be a Court of Record

Constitution and first Judges of the High Court

2 And We do hereby appoint and ordain that the High Court of Judicature at Rangoon shall until further or other provision be made by Us, or Our heirs and successors in that behalf in accordance with section one hundred and one of the Government of India Act, ordinarily

consist of a Chief Justice and not less than seven other Judges the first Chief Justice being Sir Sydney Maddock Robinson Kt and the other Judges being Leslie Harry Saunders Esq C S I, Maung Kin Esq Charles Philip Radford Young Esq, Henry Sheldon Pratt Esq Benjamin Herbert Heald Esq, John Guy Rutledge Esq, one of Our Counsels learned in the law and Hugh Ernest MacColl Esq, being respectively qualified as in the said Act is declared

Declaration to be made by Judges

3 And We do hereby ordain that the Chief Justice and every other Judge of the High Court of Judicature at Rangoon previously to entering upon the execution of the duties of his office shall make and subscribe the following declaration before such authority or person as the Governor of Burma in Council may commission to receive it —

'I *A B*, appointed Chief Justice (*or* a Judge) of the High Court of Judicature at Rangoon, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment

Seal

4 And We do hereby grant ordain and appoint that the High Court of Judicature at Rangoon shall have and use as occasion may require a seal bearing a device and impression of Our Royal Arms within an exergue or label surrounding the same with this inscription The Seal of the High Court at Rangoon And We do further grant ordain and appoint that the said seal shall be delivered to and kept in the custody of the Chief Justice and in case of vacancy of the office of the Chief Justice or during any absence of Chief Justice the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice under the provisions of section one hundred and five of the Government of India Act And We do further grant ordain and appoint that whensoever the office of Chief Justice or of the Judge to whom the custody of the said seal be committed is vacant the said High Court shall be and is hereby authorized and empowered to demand seize and take the said seal from any person or persons whomsoever by whatways and means soever the same may have come to his her or their possession

Writs etc, to issue in the name of the Crown and under Seal

5 And We do hereby further grant ordain and appoint that all writs summonses precepts rules orders and other mandatory process to be used issued or awarded by the High Court of Judicature at Rangoon shall run and be in the name and style of Us or of Our heirs and successors and shall be sealed with the Seal of the said High Court

Appointment of Officers

6 And We do hereby authorize and empower the Chief Justice of the High Court of Judicature at Rangoon from time to time as occasion may require and subject to any rules and restrictions which may be prescribed from time to time by the Governor of Burma in Council to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent And it is Our further will and pleasure, and We do hereby for Us Our heirs and successors give, grant, direct and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive [illegible] Chief Justice may from tim to time [illegible] tively and as the Governor of Burma [illegible] Secretary of State in Council may approve Provided always and it is Our will and pleasure that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they hold their respective offices, but this proviso shall not interfere

with or prejudice the right of any officer or clerk to avail himself of leave of absence permissible by or under any rules made by the Secretary of State in Council, and to absent himself from the said limits during the term of such leave in so far as may be permitted by or under the said rules

Admission of Advocates, Pleaders and Attorneys

Powers of High Court in admitting Advocates Pleaders and Attorneys

7 And We do hereby authorize and empower the High Court of Judicature at *Rangoon* to approve, admit and enrol such and so many Advocates, Pleaders and Attorneys as to the said High Court as may seem meet and such Advocates Pleaders and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors according as the said High Court may by its rules and directions determine, and subject to such rules and directions

Powers of High Court in making rules for the qualifications, etc, of Advocates, Pleaders and Attorneys

8 And We do hereby ordain that the High Court of Judicature at Rangoon shall have power to make rules from time to time for [illegible] of proper person [illegible] Attorneys of the [illegible] empowered to remove or to suspend *from practice*, on reasonable cause the said Advocates Pleaders or Attorneys, *and no person* whatsoever but such Advocates Pleaders or Attorneys shall be allowed to act *or to plead for*, or on behalf of, any suitor of the said High Court, except that any suitor shall be allowed to appear, plead or act on his own behalf, *or* on behalf of a co suitor

Civil Jurisdiction of the High Court

Local limits of the ordinary *original* Civil Jurisdiction

9 And We do hereby ordain that the High Court of Judicature at Rangoon shall have and exercise ordinary original civil jurisdiction within such local limits as *may* from time to time be declared and prescribed [illegible] and until some local limits shall be [illegible] limits of the ordinary original civil [illegible] *Burma immediately* before the publi[illegible] original *civil jurisdiction* of the [illegible] the *limits* for the time being declared [illegible] *jurisdiction*

Original jurisdiction as to suits

10 And We do further ordain that the High Court of Judicature at Rangoon in the exercise of its ordinary *original* civil jurisdiction shall be empowered to receive, *try and determine* suits of every description if, in the case of suits for land or other *immovable* property, such land or property shall be situated or *in all other cases if the cause of* action shall have arisen either wholly, *or in case the leave of the Court shall* have been first obtained in part, within the local limits of the ordinary original civil jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within such limits, except *that the said High* Court shall not have such original jurisdiction in cases falling *within the* jurisdiction of the Rangoon Small Cause Court

Notes—The term '*suits for land* or other immovable property' means suits in which having regard to the issues raised in the pleadings the decree or order will affect directly the proprietory or possessory title to land or other immovable property A I R. 1934 Rang 250=12 Rang 370 (F B), see also A I R 1934 Rang 35 9 Rang 13=A I R 1931 Rang 109

11. And We do further ordain that the High Court of Judicature at Rangoon shall have power to remove, and to try and determine, as a Court of extraordinary original civil jurisdiction any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so either on the agreement of the parties to that effect or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court

Extraordinary original civil jurisdiction

12 And We do further ordain that when the plaintiff has several causes of action against the defendant, such causes of action not being for land or other immovable property, and the High Court of Judicature at Rangoon shall have original jurisdiction in respect of one of such causes of action it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit and to make such order for trial of the same as to the said High Court shall seem fit

Joinder of several causes of action

13 And We do further ordain that an appeal shall lie to the High Court of Judicature at Rangoon, from the judgment (not being a judgment made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of s 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one judge of any Division Court, pursuant to s 108 of the Government of India Act and that notwithstanding anything hereinbefore ' he said High Court from a judgment of one one Judge of any Division Court, pursuant India Act, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal * but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided

Appeal to the High Court from Judges of the Court

Notes—*As regards meaning of judgment, vide 9 Rang Cr 78*=A. I R 1931 Rang 286, 10 Rang 189=A I R 1932 Rang 96, 11 Rang 19=A I R 1933 Rang 15, 9 Rang 31=A I R. 1931 Rang 147 (F B), A I R 1934 Rang 19

14 And We do further ordain that the High Court of Judicature at Rangoon shall be a Court of Appeal from the Civil Courts of the Province of Burma for which, immediately before the publication of these presents the Chief Court of Lower Burma or the Court of the Judicial Commissioner of Upper Burma was a Court of Appeal and from all other Civil Courts whether within or without the Province of Burma for which the said High Court is declared to be a Court of Appeal by any law made by the Local Legislature or by competent legislative authority for India, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents subject to appeal to the Chief Court of Lower Burma or to the Court of the Judicial Commissioner of Upper Burma by of any law then in force, or as may after that date be d ... act

Appeal from other Civil Courts

*Certain words after this omitted by Letters Patent dated 3rd ... 1927

appeal to the said High Court by any law made by the Local Legislature or by competent legislative authority for India

15 And We do further ordain that the High Court of Judicature at Rangoon shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Province of Burma, as that which was vested in the Chief Court of Lower Burma, and the Court of the Judicial Commissioner of Upper Burma immediately before the publication of these presents

Jurisdiction as to Infants and Lunatics

16. And We do further ordain that the Court for relief of insolvent debtors at Rangoon shall be held before one of the Judges of the High Court of Judicature at Rangoon and the said High Court, and any such Judge thereof, shall have and exercise within the province of Burma, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in the Province of Burma

Provision with respect to the Insolvent Court

17 And We do further ordain that, with respect to the law to be applied to each case coming before the High Court of Judicature at Rangoon in the exercise of its ordinary original civil jurisdiction, such law shall be the law which would have been applied by the Chief Court of Lower Burma to such case if these Letters Patent had not issued

Law to be administered by the High Court in the exercise of ordinary original civil jurisdiction

18 And We do further ordain that, with respect to the equity to be applied to each case coming before the High Court of Judicature at Rangoon in the exercise of its ordinary original civil jurisdiction such equity shall be the equity as nearly as may be which the High Court of Judicature at Fort William in Bengal in the exercise of its ordinary original civil jurisdiction is authorized to apply to such case

Equity to be administered by the High Court in the exercise of ordinary original civil jurisdiction

19 And We do further ordain that, with respect to the law or equity, and rule of good conscience to be applied to each case coming before the High Court of Judicature at Rangoon in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall, until otherwise provided, be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein

Law and equity to be administered by the High Court in the exercise of extraordinary original civil jurisdiction

20 And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Rangoon to each case coming before it in the exercise of its appellate jurisdiction such law or equity and rule of good conscience shall be the law or equity and the rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case

Law and equity to be administered by the High Court in the exercise of appellate jurisdiction

Criminal Jurisdiction

21 And We do further ordain that the High Court of Judicature at Rangoon shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also

Ordinary original criminal jurisdiction of the High Court

in respect of all persons beyond such limits over whom the Chief Court of Lower Burma had such criminal jurisdiction immediately before the publication of these presents

Jurisdiction as to persons

22 And We do further ordain that the High Court of Judicature at Rangoon, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law

Extraordinary original criminal jurisdiction

23 And We do further ordain that the High Court of Judicature at Rangoon shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Government Advocate, or by any magistrate or other officer specially empowered by the Government in that behalf

No appeal from High Court exercising original criminal jurisdiction

Court may reserve points of law

24 And We do further ordain that there shall be no appeal to the High Court of Judicature at Rangoon from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court

High Court to review on certificate of the Government Advocate

25 And We do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified by the Government Advocate that in his judgment there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction or that a point or points of law which has or have been decided by the said Court, should be further considered, the High Court of Judicature at Rangoon shall have full power and authority to review the case, or such part of it, as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction and to pass such judgment and sentence as to the said High Court shall seem right

Appeals from Criminal Courts

26 And We do further ordain that the High Court of Judicature at Rangoon shall be a Court of Appeal from the Criminal Courts for which immediately before the publication of these presents the Chief Court of Lower Burma or the Judicial Commissioner of Upper Burma was a Court of Appeal and from all other Criminal Courts whether within or without the Province of Burma, for which the said High Court is declared to be a Court of Appeal by any law made by the local legislature or by competent legislative authority for India, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents subject to appeal to the Chief Court of Lower Burma or to the Judicial Commissioner of Upper Burma by virtue of any law then in force, or as may after that date be declared subject to appeal to the said High Court by any law made by the Local Legislature or by competent legislative authority for India

Hea[illegible] and r[illegible]

27 And We do further ordain that the High Court of Judicature at Rangoon shall be a Court of reference and [illegible] Courts subject to its [illegible] ll have power to hear [illegible] Judges, or by any

appeal to the said High Court by any law made by the Local Legislature or by competent legislative authority for India

15 And We do further ordain that the High Court of Judicature at Rangoon shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Province of Burma, as that which was vested in the Chief Court of Lower Burma, and the Court of the Judicial Commissioner of Upper Burma immediately before the publication of these presents

Jurisdiction as to Infants and Lunatics

16. And We do further ordain that the Court for relief of insolvent debtors at Rangoon shall be held before one of the Judges of the High Court of Judicature at Rangoon and the said High Court, and any such Judge thereof, shall have and exercise within the province of Burma, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in the Province of Burma.

Provision with respect to the Insolvent Court

17 And We do further ordain that, with respect to the law to be applied to each case coming before the High Court of Judicature at Rangoon in the exercise of its ordinary original civil jurisdiction, such law shall be the law which would have been applied by the Chief Court of Lower Burma to such case if these Letters Patent had not issued

Law to be administered by the High Court in the exercise of ordinary original civil jurisdiction

18 And We do further ordain that, with respect to the equity to be applied to each case coming before the High Court of Judicature at Rangoon in the exercise of its ordinary original civil jurisdiction, such equity shall be the equity as nearly as may be which the High Court of Judicature at Fort William in Bengal in the exercise of its ordinary original civil jurisdiction is authorized to apply to such case

Equity to be administered by the High Court in the exercise of ordinary original civil jurisdiction

19 And We do further ordain that, with respect to the law or equity, and rule of good conscience to be applied to each case coming before the High Court of Judicature at Rangoon in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall, until otherwise provided, be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein

Law and equity to be administered by the High Court in the exercise of extraordinary original civil jurisdiction

20 And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied by the High Court of Judicature at Rangoon, to each case coming before it in the exercise of its appellate jurisdiction, such law or eq[illegible]

Law and equity to be administered by the High Court in the exercise of appellate jurisdiction

an[illegible] the [illegible]
s[illegible]

Criminal Jurisdiction

21 And We do further ordain that the High Court of Judicature at Rangoon shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction; and also

Ordinary original criminal jurisdiction of the High Court

Matrimonial Jurisdiction

Matrimonial Jurisdiction

33 And We do further ordain that the High Court of Judicature at Rangoon shall have jurisdiction within the province of Burma, in matters matrimonial between Our subjects professing the Christian religion Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Letters Patent within the said Province which is lawfully posseseed of that jurisdiction

Powers of Single Judges and Division Courts

Single Judges and Division Courts

34 And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Rangoon in the exercise of its original or appellate jurisdiction may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but if the Judges be equally divided [they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it]*

Civil Procedure

Regulation of proceedings

35 And We do further ordain that it shall be lawful for the High Court of Judicature at Rangoon from time to time to make rules and orders for the purpose of regula
ting ... rought before the said High
Cou ... testamentary intestate and
matr ... always that the said High
C ... possible by the
p ... the Governor
C ... of 1908 and the
provisions of any law which has been or may be made amending or altering the same by the local legislature or by competent legislative authority for India

Criminal Procedure

Regulation of proceedings

36 And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Rangoon shall be regulated by the Code of Criminal Procedure being an Act No V of 1898, passed by the Governor General of India in Legislative Council, or by such further or other laws in relation to Criminal Procedure as have been or may be made by the local Legislature or by competent legislative authority for India

Appeals to Privy Council

Power to appeal in Civil Cases

37 And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council in any matter not being of criminal jurisdiction from any final judgment, decree or order of the High Court of Judicature at Rangoon made on appeal and from any final judgment decree or order made in the exercise of original

* Inserted by Letters Patent of 1927

jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provisions contained in the 13th clause of these presents

Provided in either case that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree or order involves, directly or indirectly some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court declares that the case is a fit one for appeal to Us, Our heirs and successors in Our or Their Privy Council, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Burma except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf

Final order—Order refusing to allow to appeal in *forma pauperis* is not final order within cl 37 A I R 1932 Rang 132 = 10 Rang 504 = 141 Ind Cas 277 Remand order disposing of rights of parties finally is final order 10 Rang 499 = A I R 1932 Rang 189 From orders passed by the High Court in insolvency a further appeal lies to His Majesty in Council if the conditions prescribed in that behalf under the C P Code are fulfilled A I R 1934 Rang 292 = 12 Rang 355

Appeal from interlocutory judgments

38 And We do further ordain that it shall be lawful for the High Court of Judicature at Rangoon at its discretion, on the motion, or, if the said High Court be not sitting then for any Judge of the said High Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree or order of the said High Court in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or Their Privy Council subject to the same rules, regulations and limitations as are herein expressed respecting appeals from final judgments, decrees and orders

Appeal in criminal cases

39 And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Rangoon made in the exerc[illegible]
tio[illegible]
for
of [illegible]
be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us Our heirs and successors, in Our or Their Privy Council provided the said High Court shall declare that the case is a fit one for such appeal, and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council, from the Courts of the Province of Burma

Rules as to transmission of copies of evidence and other documents

40. And We do further ordain that in all cases of appeal made from any judgment, decree order or sentence of the High Court of Judicature at Rangoon to Us Our heirs and successors in Our or Their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or Their Privy Council, a true and correct copy of all evidence, proceedings judgments, decrees and orders had or made, in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court And that the said High Court shall also certify and transmit to

Us, Our heirs and successors, in Our or Their Privy Council a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or, against the judgment or determination appealed against And We do further ordain that the said High Court shall, in all cases of appeal to Us Our heirs and successors, in Our or Their Privy Council, conform to and execute, or cause to be executed such judgments and orders as We, Our heirs and successors in Our or Their Privy Council, may think fit to make in the premises in such manner as any original judgment, decree or decretal order, or other order or rule of the said High Court, should or might have been executed

Exercise of Jurisdiction elsewhere than at the usual place of sitting of the High Court

Exercise of jurisdiction else where than at the usual place of sitting of the High Court

41 And We do further ordain that, unless the Governor of Burma in Council otherwise directs one or more Judges of the High Court of Judicature at Rangoon, as the Chief Justice may from time to time direct, shall sit at Mandalay, in order to exercise in respect of cases arising in such areas in Upper Burma as the Governor of Burma in Council may direct the jurisdiction and power by these Our Letters Patent, or by or under the Government of India Act, vested in the said High Court Provided that the Chief Justice may in his discretion order that any particular case arising in the said areas in Upper Burma shall be heard at Rangoon

Special commissions and circuits

42 And We do further ordain that whenever it appears convenient to the Governor of Burma in Council, that the jurisdiction and power by these Our Letters Patent or by or under the Government of India Act vested in the High Court of Judicature at Rangoon should be exercised in any place within the jurisdiction of any Court subject to the superintendence of the said High Court other than the usual place of sitting of the said High Court or at several such places by way of circuit, one or more Judges of the said High Court shall visit such place or places accordingly

Proceedings of Judges on Special Commission or circuit

43 And We do further ordain that whenever any Judge or Judges of the High Court of Judicature at Rangoon shall visit or sit at any place under the 41st or the 42nd clause of these presents the proceedings in cases before him or them at such place shall be regulated by any law relating thereto which has been or may be made by the local legislature or by a competent legislative authority for India

Provisions regarding Pending Proceedings

Provisions regarding pending proceedings

44 And We do further ordain that all suits, appeals revisions, applications, reviews, executions and other proceedings whatsoever pending immediately before the publication of these presents in the Chief Court of Lower Burma, or before the Judicial Commissioner of Upper Burma or in the Court of the Judicial Commissioner of Upper Burma in the exercise of any jurisdiction vested in them by any law shall be continued and concluded in the High Court of Judicature at Rangoon as if the same had been instituted in the said High Court, and the said High Court shall in relation to all such proceedings exercise the jurisdiction given to it by these presents

Delegation of Duties to officers

Power to delegate duties

45 The High Court of Judicature at Rangoon may from time to time make rules for delegating to any Registrar Prothonotary or Master or other official of the Court any judicial, quasi judicial and non judicial duties

Calls for Records, etc, by the Government

High Court to comply with requisitions from Government for records, etc

46. And it is Our further will and pleasure that the High Court of Judicature at Rangoon shall comply with such requisitions as may be made by the Governor General of India in Council or by the Governor of Burma in Council for records, returns and statements in such form and manner as he may deem proper.

Powers of Indian Legislatures

Powers of Indian Legislatures preserved

47. And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the Legislative powers of the Local Legislature and of the Ind[illegible] [illegible]vernor General in Council under sect[illegible] [illegible]; and also of the Governor General [illegible] [illegible] in all [illegible] [illegible] Patent [illegible] in the year of Our Lord one thousand nine hundred and twenty two and in the Thirteenth year of Our Reign

By Warrant under the King's Sign Manual

(Sd) Schuster

THE INDIAN LIFE ASSURANCE COMPANIES ACT, 1912

ACT NO VI OF 1912

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 18TH MARCH, 1912

An Act to to provide for the regulation of Life Assurance Companies

WHEREAS it is expedient to provide for the regulation of life assurance companies, It is hereby enacted as follows —

Preliminary.

Short title and extent

1 (1) This Act may be called the *Indian Life* Assurance Companies Act, 1912

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,

(1) "actuary" means an actuary possessing such qualifications as may be prescribed by rules made by the Governor General in Council

(2) "chairman' means the person for the time being presiding over the board of directors or other governing body of a life assurance company

(3) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction

(4) 'financial year" means each period of twelve months at the end of which the balance of the accounts of the life assurance company is struck, or, if no such balance is struck, then the calender year

(5) "life assurance business" means the issue of, or the undertaking of liability under policies of assurance upon human life, or the granting of annuities upon human life

(6) "policy of assurance on human life' means any instrument by which th payment of money is assured on death (except death by accident only)

or the happening of any contingency dependant on human life or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life

(7) "policy holder" means the person who for the time being is the legal holder of the policy for securing the contract with the life assurance company :

(8) where a company grants annuities upon human life, 'policy" includes the instrument evidencing the contract to pay such an annuity, and 'policy-holder" includes annuitant : and

(9) "Registrar" means any person who may be appointed by the Local Government to perform the duties of the Registrar under this Act

ness or accident does not, however, become a life policy merely because there is an incidental provision that in the case of the policy continuing in force without any claim having been made until the assured attains a specified age the company will return a certain portion of the annual premiums *General Accident* v *Inland Revenue*, (1904) 2 K B 658

Companies to which Act applies

3 Save as hereafter expressly provided, this act shall apply to all persons or bodies of persons, whether corporate or unincorporate (which persons and bodies of persons are hereafter referred to as life assurance companies), whether established before or after the commencement of thi Act and whether established within or without British India, who carry on life assurance business within British India

Explanation—A company registered under the Indian Companies Act,

Exception —Nothing in this Act shall apply to any society to which the Provident Insurance Societies Act, 1912, applies or to any Fund which the Governor General in Council may, by notification in the *Gazettee of India*,

section 1 of the British Assurance Com *Dolby* v *India and London Life Assurance* , at p 387, says 'The contract commonly called life-assurance, when properly considered is a mere contract to pay a certain

of a certain instance nd inva ies Act surance within the meaning of the Provident Insurance Societies Act 1912 21 ind Cas 259 =40 C 570

Deposits

Deposits

4 (1) Every life assurance company shall, if established before the commencement of this Act, within one year from such commencement, or, if established after such commencement, before it commences to carry on the business of life assurance, deposit and keep deposited with the 'Controller of Currency * for and on behalf of the Governor General in Council, Government securities as defined by the Indian Securities Act, 1886, † of the face value of twenty five thousand rupees or of a face value equal to one third of the income derived from life asurance business as shown in the revenue account for the last financial year, whichever is greater and, until the company keeps deposited securities of the

* The words within quotations have been substituted by Act XIII of 1914

† XIII of 1886

face value of two hundred thousand rupees shall annually deposit and keep deposited in like manner like securities of a face value—

(a) equal to one third of the income derived from life assurance business as shown in the revenue account for the last financial year until the face value of the securities deposited exceeds one hundred thousand rupees,

(b) and thereafter equal in amount to one third of the increase to the life assurance fund as shown in the revenue account for the last financial year

Provided that a company may at any time deposit securities of a face value of two hundred thousand rupees or make up its deposit of securities to that value

(2) The interest accruing due on the securities deposited under sub section (1) shall be paid to the company

(3) The deposit may be made by the subscribers of the memorandum of association of a company or any of them, in the name of a proposed company, and upon the incorporation of the company, shall be deemed to have been made by and to be part of the assests of, the company, and the Registrar of Joint Stock Companies shall not issue a certificate, of incorporation of the company under the Indian Companies Act, 1882, until the deposit has been made

(4) The deposit shall be deemed to form part of the life assurance fund of the company

... of the British Assurance Com company requ red to make association of a company in ... 40

Accounts and Documents

Separation of funds

5 In the case of a life assurance company transacting other business besides that of life assurance a separate account shall be kept of all receipts in respect of the life assurance business and the said receipts shall be carried to and form a separate fund to be called the life assurance fund

Explanation—Nothing in this section shall be deemed to require any life assurance fund to be invested in separate investments from any other fund, but a separate balance sheet as prescribed under section 7 shall be kept in respect of the life assurance fund

Exception—Nothing in this section shall apply to a life assurance company established before the commencement of this Act by the terms of whose deed of settlement the whole of the profits of all the business carried on by the company are paid exclusively to the life policy holders and on the face of whose life policies the liability of the life assurance fund in respect of the other business distinctly appears

Notes—This section corresponds to section 3 1) of the British Assurance Companies Act, 1900 When a life assurance company transacts other business than life assurance it must keep a separate account in respect of life assurance business

Appropriation of life assurance fund

6 The life assurance fund shall be as absolutely the security of the life policy holders as though it belonged to a company carrying on no other business than life assurance business, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life assurance and shall not be applied directly or indirectly, for any purposes other than those of life assurance

Exception—Nothing in this section shall affect the liability of the life assurance fund in the case of a company established before the commencement of this Act for contracts entered into by the company before such commencement

Notes—This section corresponds to section 3(2) of the British Assurance Companies Act, 1909

Accounts and balance sheets

*7. (1) Every life assurance company shall, at the expiration of each financial year, prepare—

(a) a revenue account for the year in the form or forms set forth in the First Schedule and applicable to the class or classes of business carried on by the company;

(b) a profit and loss account in the form set forth in the Second Schedule, except where the company carries on life assurance business only and no other business,

(c) a balance sheet or balance sheets in the form or forms, set forth in the Third Schedule,

(d) a statement containing the name of every person who during the year was a member of the board of directors or other governing body or was manager or secretary or held any similar office by whatever name called

(e) a statement showing—

(A) as regards new policies of life assurance in respect of which a premium has been paid in the year of account.

(i) the number of policies,

(ii) the sums assured,

(B) as regards total life assurance business,—

(i) the number of policies in force at the end of the year of account,

(ii) the sum assured (including reversionary bonus additions thereto) under policies in force at the end of the year of account, and

(iii) the premium income for which credit is taken in the revenue account;

(C) as regards claims, the amount of the claims paid in the year of account under policies effected in India.

(i) to claimants in India, and

(ii) to claimants outside India,

(f) a statement showing, in such forms as the Governor General in Council may prescribe, a classified summary of the investments of the Company in India in Government Securities and in Indian concerns and the other Indian assets held by the Company

"(2) For the purposes of clause (e) of sub section (1), all items required to be stated shall be net amounts after deduction of the re insurances of the company's risks, and for the purposes of sub clauses (A) and (B) of a that clause

(a) the statement shall show separately the numbers and amount in respect of policies effected in, and policies effected outside India,

(b) where a sum assured is payable periodically, whether by way of an annuity or otherwise, it shall be stated separately from lump sum payments, and

(c) policies of assurance upon the lives of group of persons whereby sums assured are payable in respect of several persons included in the group shall be excluded from the statement and be shown in a separate statement containing the like particulars †

Notes—This section corresponds to section 4 of the British Assurance Companies Act, 1909 Clause (c) is new

* Section 7 has been renumbered 7 (1) and clauses (e), (f) and sub section (2) have been added by Act XX of 1928

† Inserted by Act XX of 1928

Actuarial reports and abstract

8. (1) Every life assurance company shall once in every five years, or at such shorter intervals as may be prescribed by the instrument constituting the company, or by its regulations or bye laws cause an investigation to be made into its financial condition including a valuation of its liabilities by an actuary and shall cause an abstract of the report of such actuary to be made in the form set forth in the Forth Schedule

(2) The provision of sub section (1) regarding the making of an abstract shall also apply whenever at any other time an investigation into the financial condition of a life assurance company is made with a view to the distribution of profits or whenever the results of any such investigation are made public

Notes—This section corresponds to section 5 of the British Assurance Companies Act, 1909 "An Actuary must be either (1) A Fellow of the Institute of Actuaries or of the Faculty of Actuaries, (2) where application is made by a company and where in the opinion of the Board of Trade special circumstances exist, an Associate of the Institute of Actuaries or of the Faculty of Actuaries; or (3) the actuary on June 6, 1910 to an assurance company to which the Act applies having his head office within the United Kingdom, or to any closed fund of such a company established in consequence of an amalgamation or transfer, or (4) such other person having actuarial knowledge as the Board of Trade may on the application of the company approve —*Maglivray's Insurance Law*, p 39

Actuarial abstracts in case of mutual company

9 In the case of a mutual life assurance Company whose profits are allocated to members wholly or mainly by annual abatements of premium the abstract of the report of the actuary on the financial condition of the company, prepared in accordance with Fourth Schedule, may notwithstanding anything in section 8, be made and returned at intervals not exceeding five years Provided that, where such return is not made annually, it shall include particulars as to the rates of abatement of premiums applicable to different classes or series of assurances allowed in each year during the period which has elapsed since the previous return under the Fourth Schedule

Statement of life assurance business

10 Every life assurance company shall, within three years from the commencement of this Act, and thereafter at the date to which the accounts of the company are made up for the purposes of the investigation prescribed by section 8, prepare a statement of its assurance business in the form set forth in the Fifth Schedule: Provided that, if the investigation is made annually by any company, the company may prepare such a statement at any time, so that it be made at least once in every five years

Notes—This section corresponds to section 6 of the British Assurance Companies Act, 1909

Deposit of accounts, &c with Governor General in Council

11 Every account, balance sheet, abstract or statement hereinbefore required to be made shall be printed, and four copies thereof, one of which shall be signed by the chairman and two directors of the company, and by the principal officer of the company, and if the company has a managing director by the managing director, shall be deposited with the Governor General in Council within six months in the case of accounts and balance sheets required by section 7, and within one year in other cases after the close of the period to which the account, balance sheet, abstract or statement relates: Provided that, if in any case it is made to appear to the Governor General in Council that the circumstances are such that a longer period should be allowed, he may extend the [illegible]

(2) [illegible]
in accord[illegible] deposited
[illegible] any such document appears to the Governor General in Council to be inaccurate or defective in any

respect, the Governor General in Council may call upon the company to furnish a further statement correcting any such inaccuracies or supplying any such deficiencies

Notes—This section corresponds to sub-section 3 of section 7 of the British Assurance Companies Act, 1909

Deposit of Report

12 There shall be deposited with every revenue account and balance sheet of a life assurance company every report on the affairs of the company submitted to the shareholders or policy holders of the company in respect of the financial year to which the account and balance sheet relate.

Notes—This section corresponds to sub sections 1 and 2 of section 7 of the British Assurance Companies Act, 1909

Exemption from certain provisions of Act VI of 1882

13 Where a life assurance company registered under the Indian Companies Act, 1882, in any year deposit its accounts and balance sheet in accordance with the provisions of sections 11, the company may, at the same time, send to the Registrar of Joint Stock Companies a copy of such accounts and balance sheet, and, where such copy is so sent it shall not be necessary for the company to file a balance sheet with the Registrar of Joint Stock Companies as required by section 74 of the Indian Companies Act, 1882, and the copy of the accounts and balance sheet so sent shall be dealt with in all respects as if it were a balance sheet filed in accordance with that section

Notes—This section corresponds to sub section (4) of section 7 of the British Assurance Companies Act, 1909

Right of share holders, &c, to copies of accounts, &c

14 A printed copy of the accounts, balance sheet abstract or statement last deposited shall on the application of any shareholder or policy holder of the company, be forwarded to him by the company by post or otherwise

Notes—This section corresponds to section 8 of the British Assurance Companies Act, 1909

Audit of accounts

15 The accounts of every life assurance company shall be audited annually in such manner as the Governor-General in Council may prescribe

Notes—This section correspends to section 9 of the British Assurance Companies Act, 1909

List of shareholders

16 Every life assurance company which is not registered under the Indian Companies Act, 1882, shall keep a list of the names and addresses of its shareholders, and shall, on the application of any shareholder or policy holder of the company, furnish to him a copy of such list on payment of a sum not exceeding two annas for every hundred words required to be copied

Notes—This section corresponds to section 10 of the British Assurance Companies Act, 1909

Deed of settlement

17 Every life assurance company which is not registered under the Indian Companies Act, 1882, shall cause a sufficient number of copies of its deed of settlement or other instrument constituting the company to be printed and shall, on the application of any shareholder or policy holder of the company, furnish to him a copy of such deed of settlement or other instrument on payment of a sum not exceeding one rupee

Notes—This section corresponds to section 10 of the British Assurance Companies Act, 1909

18 Where any notice, advertisement or other official publication of a life assurance company contains a statement of the amount of the authorized capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up

Publication of authorized as well as subscribed and paid up capital

Notes —This section corresponds to section 11 of the British Assurance Companies Act, 1909

19 (1) Every life assurance company, constituted outside British India, which establishes a place of business within British India or appoints an agent in British India with the object of obtaining life assurance business shall, within three months from the establishment of the place of business or the appointment of such agent, file with the Registrar—

Requirements as to companies established outside British India

(*a*) a certified copy of the charter, statute or memorandum and articles of the company, or other instrument constituting or defining the constitution of [illegible] is not written in the English language, a

[illegible] e company,

[illegible] some one or more persons resident in British India authorized to accept on behalf of the company service of process and any notices required to be served on the company,

and in the event of any alteration being made in any such instrument or in the list of directors or in the names and addresses of such persons as aforesaid, the company shall within such time as the Governor General in Council may prescribe, file with the Registrar a notice of the alteration

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed

(3) There shall be paid to the Registrar for registering any document, required by this section to be filed, a fee of five rupees or such smaller fee [illegible] prescribe

[illegible] ompany is deemed to carry on business [illegible] is therein *conducting business on its* [illegible] *Actien Gesellschaft* (190?) 1 K B 342, *Compagnina General and Transatlantique* v *Law*, (1890) A C 431

Amalgamation or Transfer.

20 (1) Where it is intended to amalgamate two or more life assurance companies, or to transfer the life assurance business of one company to another, the directors of any one or more of such companies may apply to the Court, by petition to sanction the proposed arrangement

Amalgamation or transfer

(2) Before any such application is made to the Court—

(*a*) notice of the intention to make the application shall be published in the *Gazette of India* and in the local official Gazette of the Province, in which the principal place of business of the company is situate at least two months before the application is made

(*b*) a statement of the nature of the amalgamation of transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded including a report by an independent actuary, shall unless the Court otherwise directs, be transmitted to each policy holder of each company, and

(*c*) the agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy holders and shareholders at the offices of the companies for a period of fifteen days after the last publication of the notice

(3) The Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established

(4) The Court shall not sanction the amalgamation or transfer in any case in which it appears to the Court that the life policy holders representing one tenth or more of the total amount assured in any company which it is proposed to amalgamate, or in any company the business of which it is proposed to transfer, dissent from the amalgamation or transfer

(5) No life assurance company shall amalgamate with another, or transfer its business to another, unless the amalgamation or transfer is sanctioned by the Court in accordance with this section.

Notes—This section corresponds to section 13 of the British Assurance Companies Act, 1909 As to the meaning of amalgamation, *vide South African Co In re*, (1904) 2 Ch 268

Clause (4)—Where it appeared at the time of hearing of a petition to sanction amalgamation, that no notice could be received by the policy holders, whose policies amounted to much less than one tenth of the amount assured, the Court nevertheless proceeded to hear the petition *London South Work Insurance, In re* (1880) 42 L T 247 When no sufficient objection is placed before the Court it can sanction the proposed agreement of transfer and amalgamation, *vide Empire Guarantee* etc (1911) 2 S L T 269 This Act does not confer any power upon Court to sanction any agreement which apart from the Act would be *ultra vires* of the companies concerned *Sovereign Life In re* (1883) 42 Ch D 540, see also *Revington's Case*, (1873) Eur Arb L T 57, *Albert Life Indemnity Case*, (1871) 16 Sol J 141 A company can purchase the business of another company *Ernest v Nicholls*, (1857) 6 H L C 401, *Era Company's Case* (1867) 1 De N J & S 26, *Era Assurance, In re* (1860) 2 J & H 400

Statement in case of amalgamation or transfer

21. Where an amalgamation takes place between any life assurance companies, or where any life assurance business of one such company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within one month from the date of the completion of the amalgamation or transfer, deposit with the Governor General in Council—

(*a*) certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer, and

(*b*) a certified copy of the agreement or deed under which the amalgamation or transfer is effected, and

(*c*) certified copies of the actuarial or other reports upon which that agreement or deed is founded, and

(*d*) a declaration under the hand of the chairman of each company, and the principal officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth, and that no other payment beyond those set forth have been made or are to be made either in money, policies bonds valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer

Notes—This section corresponds to section 14 of the British Assurance Companies Act, 1909.

Winding up.

Special provisions as to winding up of assurance companies

22 The Court may order the winding up of a life assurance company, in accordance with the Indian Companies Act, 1882, and the provisions of that Act shall apply accordingly, subject, however, to the modification that the company may be ordered to be wound up—

(a) on the petition of ten or more policy holders :

Provided that such a petition shall not be presented except by the leave of the Court, and leave shall not be granted until a *prima facie* case has been established to the satisfaction of the Court, and until security for costs for such amount as the Court may think reasonable has been given , or

(b) on application made on behalf of the Governor General in Council, showing that from a consideration of the documents deposited with him under the provisions of this Act it appears to him that the company is insolvent

Notes—This section corresponds to section 15 of the British Assurance Companies Act, 1909

Winding up of subsidiary companies

23 (1) Where a life assurance business or any part of the life assurance business of a life assurance company has been transferred to another company under an arrangement in pursuance of which the first mentioned company (in this section called the subsidiary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section called the principal company), then, if the principal Company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary, with a view to the companies being wound up as if they were one company

(2) The commencement of winding up of the principal company shall, save as otherwise ordered by the Court be the commencement of the winding up of the subsidiary company

(3) In adjusting the rights and liabilities of the members of the several companies between themselves, the Court shall have regard to the constitution of

[illegible]

company, or as near thereto as circumstances admit

(4) Where any company alleged to be subsidiary is not in process of being wo[illegible] it is subsidiary, [illegible] up unless, after [illegible] of the company [illegible] the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable

(5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company

(6) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section

Notes—This section coresponds to section 16 of the British Assurance Companies Act, 1909

Clause (1)—*Vide Lancashire Plate Glass In re* (1911) 46 L J 683 Before the British Life Assurance Companies Act 1870 the Court had no jurisdiction to make one winding up order in respect of two distinct companies however much the affairs of the companies might be involved the one with the other *Shields Marine Association*, (1867) 16 W R 69

24 Where a life assurance company is being wound up by the Court or subject to the supervision of the Court or voluntarily, the value of a policy or of a liability under a policy requiring to be valued in such winding up shall be estimated in manner applicable to policies and liabilities provided by the sixth Schedule

Valuation of annuities and policies

Notes—This section corresponds to section 17(1) of the British Assurance Companies Act, 1909

25 The rules in the Sixth Schedule shall be of the same force, and may be repealed, altered or amended as if they were rules made in pursuance of section 254 of the Indian Companies Act, 1882, and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of life assurance companies

Rules of valuation

Notes—This section corresponds to section 17(2) of the British Assurance Companies Act, 1909

26 The Court, in the case of a life assurance company which has been proved to be unable to pay its debts, may if it thinks fit reduce the amount of the contracts of the company upon such terms and subject to such conditions as it thinks just, in place of making a winding up order

Power to Court to reduce contracts

Notes—This section corresponds to section 18 of the British Assurance Companies Act, 1909 A scheme under this provision is a substitution for a winding up order Provision will be made for immediate payment either in full or in part, of policies
premiu
scale
get mor

"26A * In the winding up of a life assurance company in a case where any proportion of the profits of the company was before the commencement of the winding up allocated to policy holders if, when the assets and liabilities of company have been ascertained, there is found to be a surplus of assets over liabilities (hereinafter referred to as a *prima facie* surplus) there shall be added to the liabilities of the company in respect of its life assurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to shareholders and policy holders as was allocated to policy holders during the ten years immediately preceding the commencement of the winding up and the assets of the company shall be deemed to exceed its liabilities only in so far as those assets exceed those liabilities after such addition as aforesaid

Application of surplus assets in liquidation

Provided that if in any case there has been no such allocation, or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the company in respect of the life assurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct"

* Inserted by Act XX of 1928

Special Provisions relating to Accounts and Documents.

27 The Governor General in Council may direct any documents deposited with him under this Act, or certified copies thereof, to be kept by the Registrar or by any other officer appointed in this behalf, and any such documents and copies shall be open to ... thereof may be procured by any person on payment

Custody and inspection of documents deposited with Governor General in Council

y direct

the British Assurance Com-

to inspection by any person on

any person may procure a

of 72 words Assr Comp

Rules 1910

28 The Governor General in Council shall annually "cause to be published in such manner as he may direct a summary of* the accounts, balance sheets, abstracts, statements and other documents under this Act or purporting to be under this Act, deposited with him during the preceding year, 'by every life assurance company,'* except reports on the affairs of life assurance companies submitted to the share holders or policy holders thereof, and may append to 'such summary'* any note of the Governor General in Council thereon, and any correspondence in relation thereto

Accounts etc, to be published

29 Every document deposited under this Act with the Governor-General in Council, and certified by the Registrar or by any person appointed in that behalf by the Governor General in Council to be a document so deposited, shall be deemed to be a document so deposited

Evidence of documents

Notes—This section corresponds to section 21 (1) of the British Assurance Companies Act, 1909 Any document purporting to be certified by the Registrar or an Assistant Registrar as a copy of a document deposited with the Board of Trade is *prima facie* evidence of the contents of the original document—*Macgillivary's Insurance Law*, p 41

30 Every document purporting to be certified by the Registrar, or by any person appointed in that behalf by the Governor General in Council, to be a copy of a document so deposited, shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document unless some variation between it and the original document be proved

Evidence of copies of documents

Notes—This section corresponds to section 21 (2) of the British Assurance Companies Act 1909

31 The Governor General in Council may, on the application or with the consent of a life assurance company, alter the forms contained in the Schedules to this Act as respects that company, for the purpose of adopting them to the circumstances of that company

Alteration of forms

Notes—This section corresponds to section 22 of the British Assurance Companies Act 1909

Companies carrying on business in the United Kingdom

32 (1) An assurance company which carries on life assurance business in the United Kingdom in accordance with the Assurance Companies Act, 1909† may, if carrying on life assurance business in British India before the commencement, of this Act within three months of such commencement, or in any other case, before it commences to carry on life

Certain companies may apply to be declared companies which carry on life assurance bussiness in the United Kingdom

* Inserted by Act XX of 1928

† 9 Edw VII Cap 49

assurance business in British India, apply to the Governor General in Council for a declaration that it so carries on such business in the United Kingdom

(2) A company applying under the provisions of sub section (1) shall furnish, at the time of its application or at such further time as the Governor General in Council may prescribe, such evidence as he may direct of the facts alleged in its application

(3) Where the Governor General in Council is satisfied that a life assurance company applying as aforesaid is a life assurance company which carries on business in the United Kingdom in accordance with the Assurance Companies Act, 1909,* he shall by notification in the *Gazette of India*, make a declaration to that effect, and shall cause such notification to be republished in the local official Gazette of the Province where the Company has or proposes to have its principal place of business

Notes —This section recognizes the Companies incorporated under the British Assurance Companies Act, 1909

Application of the Act to companies which carry on life assurance business in the United Kingdom

33 Where the Governor General in Council has notified a declaration in accordance with the provisions of section 32 in respect of a life assurance company, nothing in section 4, section 5 [clause (*a*), (*b*) (*c*) or (*d*) of sub section (1) of section 7, sections 8 to 12]† section 15, 20, 21 or 37 shall apply to the company

Provided that—

(1) the company shall deposit with the Governor General in Council in the manner prescribed in section 11, copies of every account, balance sheet, abstract statement or other document which the company is required by the Assurance Companies Act 1909 * to deposit at the Board of Trade,

(2) if at any time a company in respect of which a declaration has been notified under section 32 ceases to carry on life assurance business in the United Kingdom in accordance with the provisions of the Assurance Companies Act, 1909,* it shall if it continues to carry on life assurance business in British India, be subject to all the provisions of this Act from the date it ceased to carry on such business in the United Kingdom in accordance with the said Act

Penalties and Procedure

Penalty for non compliance with Act

34 Any life assurance company which makes default in complying with any of the requirements of this Act, and every director, manager or secretary, or other officer or agent of the company who is knowingly a party to the default shall be punishable with fine which may extend to one thousand rupees or, in the case of a continuing default with fine which may extend to five hundred rupees for every day during which the default continues, and if default continues for a period of three months after notice of default by the Governor General in Council (which notice shall be published in one or more newspapers as the Governor General in Council may, upon the application of one or more policy holders or shareholders direct) the default shall be a ground on which the Court may order the winding up of the company in accordance with the Indian Companies Act, 1882

Notes —This section corresponds to section 23 of the British Assurance Companies Act 1909

Penalty for falsifying statements, etc

35 If any account, balance sheet, abstract, statement or other document required by this Act is false in any particular to the knowledge of any person who signs it, such person shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both

Notes —This section corresponds to section 24 of the British Assurance Companies Act 1909

* 9 Edw VII cap 49

† Substituted by Act XX of 1923

Cognizance of offences

36 No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act

Miscellaneous

Appointment of inspectors

37 (1) The Governor Gen ral in Council may appoint one or more inspectors to examine into the affairs of any life assurance company, and to report thereon in such manner as he may direct —

(i) in the case of a life assurance company which is not registered under the Indian Companies Act, 1882 * upon the application —

(a) of shareholders being in number not less than one fifth of the whole number of persons for the time being entered on the list of shareholders kept in accordance with the provisions of section 16 , or

(b) of twenty or more policy holders owning policies of an aggregate value of not less than twenty thousand rupees ,

(ii) in any case where a life assurance company has failed to furnish a further statement when required to do so under the provisions of section 11, sub section (2), or where the Governor General in Council is of opinion that any such further statement is insufficient or unsatisfactory

(2) On an appointment being made under sub-section (1) the provisions of section 84 of the Indian Companies Act 1882* shall apply to the examination made by such inspectors

Service of notices

38 Any notice or other document which is by this Act required to be sent to any policy holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy

Provided that where any person claiming to be interested in a policy has given to the company notice in writing of his interest, any notice which is by this Act required to be sent to policy holders shall also be sent to such person at the address specified by him in his notice

Notes —This section corresponds to section 26 of the British Assurance Companies Act 1909 The documents must be sent so as to be received a reasonable time before the hearing of the petition but need not necessarily be sent before the presentation of the petition *Breton Life In re* (1887) 56 L J Ch 889

Powers to make rules

39 (1) The Governor General in Council may make rules to carry out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the qualifications to be possessed by actuaries, auditors and ... hich the accounts of life assu

... which notice of alteration ... e Act shall be filed with the Registrar ,

(c) subject to the provisions of this Act prescribe the fees payable thereunder

(3) All rules made under this Act shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act

Power of ... in Council ... Local Government to exercise the powers conferred by this Act

40 The ... notification in the *Gazette* ... to such conditions and res... fit, delegate to any Local Government all or any of the powers (other than the power to make rules under section 39) conferred on him by this Act

* VI of 1882

41 The Governor General in Council may, by notification in the *Gazette of India*, and subject to such restrictions and conditions as he thinks fit, exempt any life assurance company from all or any of the provisions of this Act

Power of Governor General in Council to exempt from the provisions of the Act

Notes—This section corresponds to section 35 of the British Assurance Companies Act 1909

42 [*Amendment of Act VI of 1882 section 131*] *Repealed by Act XVII of 1924*

THE FIRST SCHEDULE

(*See section 7*)

REVENUE ACCOUNTS OF THE FOR THE YEAR ENDING

(*A*)—Life Assurance Account

	Rs		Rs
		Dividends payable on 19 for the year ending 19 (This is only to be stated where by companies not supplying a Profit and Loss account)	
		Claims under policies paid and outstanding—	
		By death	
Amount of life assurance fund at the beginning of the year		By maturity	
		Surrenders including surrenders of bonus additions	
		Annuities	
		Bonuses in cash	
Premiums		Bonuses in reduction of premiums	
		Expenses of management —	
		Commission	
		Agents and Canvassers allowances	
		Salaries etc (other than to Agents and Canvassers)	
Consideration for annuities granted* (see Note 1)		Travelling expenses	
		Directors fees	
		Auditors' fees	
Rs		Medical fees	
Interests dividends and rents		Rents for offices belonging to and occupied by the company	
		Rents of other offices occupied by the company	
Less income tax thereon		Law charges	
		Advertising	
		Printing and stationery	
		Other expenses of management (accounts to be specified)	
Other receipts (accounts to be specified)		Other payments (accounts to be specified)	
		Amount of life assurance fund at the end of the year, as per Third Schedule	
Rs		Rs	

* NOTE 1 —Companies having a separate annuity fund with investments separate from those of the life assurance fund to return the particulars of their annuity business in a separate statement, in form B of this Schedule

NOTE 2 —Items in this account to be net amounts after deduction of the amounts paid and received in respect of reassurances of the company's risk.

NOTE 3 —If any sum has been deducted from the expenses of management account and taken credit for in the balance sheet as an asset, the sum so deducted to be separately shown in the above account.

(*B*)—Revenue Account applicable to annuity business of those companies having a separate annuity fund the investments of which are kept separate from those of the life assurance fund

	Rs		Rs
Amount of annuity fund at the beginning of the year		Annuities	
Consideration for annuities granted		Surrenders	
Interests dividends and rents (Rs)		Expenses of management —	
Less income tax thereon		Commission	
Other receipts		Other expenses (to be specified)	
		Other payments (accounts to be specified)	
		Amount of annuity fund at the end of the year as per Balance sheet	
Rs		Rs	

NOTE—Items in this account to be net amounts after deduction of the amounts paid and received in respect of reassurances of the company's risks

(*C*)—General Revenue Account applicable to all classes of business other than life assurance and annuity transactions

	Rs		Rs
Amount of funds at the beginning of the year		Claims less reassurances (accounts to be specified)	
Premiums (accounts to be specified)		Expenses of management —	
Interests, dividends and rents (Rs)		Commission	
Less income tax thereon		Other expenses (to be specified)	
Profits (accounts to be specified)		Losses (accounts to be specified)	
Other receipts (to be specified)		Other payments (accounts to be specified)	
		Amount of funds at the end of the year as per Balance sheet	
Rs		Rs	

Note 1—All the items in the above account to be exclusive of life assurance and annuity transactions

Note 2—Items in this account to be net amounts after deduction of the amounts paid and received in respect of re assurances of the company's risks

(*D*)—Statement to be submitted along with the Revenue Account by all life assurance companies (Omitted by Act XX of 1928 s 5)

THE SECOND SCHEDULE

(*See section 7*)

PROFIT AND LOSS ACCOUNT OF THE———— FOR THE YEAR ENDING 19

	Rs		Rs
Balance of last year's account		Dividends and bonuses to share holders payable on 19 , for the year ending 19	
Rs		Expenses not charged to other accounts	
Interest and dividends not carried to other accounts		Loss realised (accounts to be specified)	
Less income tax thereon		Other payments (accounts to be specified)	
		Balance as per Third Schedule	
Profits realized (accounts to be specified)		Rs	
Other receipts (accounts to be specified)			
Rs			

THE THIRD SCHEDULE

(*See section 7*)

(A) BALANCE SHEET———OF THE———ON THE——— — 19

LIABILITIES	Rs	ASSETS	Rs
Life assurance fund—		Assets of life assurance fund as per separate balance sheet (if any)	
Outstanding liabilities of life assurance fund		Assets of annuity fund as per separate balance sheet (if any)	
		Assets of funds other than those shown in [illegible]	
Annuity fund (if any) as per separate balance sheet			
Outstanding liabilities of annuity fund		Do life interests and reversions	
		Do stocks and shares	
		Do company's policies within their surrender values	
		Do personal security	
Shareholders capital paid up (if any)		Investments—	
		Deposit with the "Controller of Currency"* securities to be specified	
Profit and Loss account (if any)			

* The words within quotations have been substituted by Act VIII of 1914

(A) BALANCE SHEET OF THE ——— AT THE 19 (*contd*)

LIABILITIES	Rs	ASSETS	Rs
Funds contained in General Revenue Account (if any) [Schedule 1 (c)]		Indian Government securities	
		[illegible]	
		British and Colonial securities	
		Foreign and Colonial securities	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the Indian Government	
Other sums owing by the Company (Account to be specified and stated separately under each class of business)		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the British or any Colonial Government	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by any Foreign Government	
		Ordinary stocks and shares of any Indian Presidency Bank	
		Debentures of any Railway in India	
		Debentures of any Railway out of India	
		Preference or guaranteed shares of any Railway in India	
		Preference or guaranteed shares of any Railway out of India	
		Ordinary stocks and shares of any Railway in India	
		Ordinary stocks and shares of any Railway out of India	
		House property in India	
		House property out of India	
		Freehold and leasehold ground rents and rent charges in India	
		Life interests and reversions in India	
		Life interests and reversions out of India	
		Other investments in India (to be specified)	
		Other investments out of India (to be specified)	
		Agents' balances	
		Outstanding premiums*	
		Do interest dividends and rents *	
		Interest accrued but not payable *	
		Bills receivable	
		Cash —	
		On deposit	
		In hand and on current account	
		Other assets (to be specified)	
Rs			Rs

* These items are or have been included in the corresponding items in the First Schedule

NOTE 1.—When parts of the assets of the company are specifically deposited under local laws, in various places out of India, as security to holders of life assurance policies there issued, each such place and the amount compulsorily lodged therein must be specified

NOTE 2—The balance sheet must state how the values of the stock exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made, a certificate must be appended, signed by the same persons as signed the balance sheet, to the effect that in their belief the assets set forth in the balance sheet are in the aggregate fully of the value stated therein,

NOTE ... state

NOTE 4 ... ances, ... time ... other ... ld the

(B) BALANCE SHEET OF THE LIFE ASSURANCE FUND ON THE 19 TO BE COMPLETED BY COMPANIES DOING BUSINESS OTHER THAN LIFE ASSURANCE FOR WHICH THEY HAVE SEPARATE FUNDS

LIABILITIES	Rs.	ASSETS	Rs
Life assurance fund		Mortgages on property within India	
Claims admitted or intimated* but not paid		Mortgages on property out of India	
Other sums owing by the company* (under this class of business)		Loans on public rates ...	
		Do Life interests and reversions	
		Do stocks and shares	
		Do Company's policies within their surrender values	
		Do personal security	
		Investments—	
		Deposits with the 'Controller of Currency'† (Securities to be specified),	
		India Government securities	
		British and Colonial Government securities	
		Foreign Government securities	
		Indian Municipal and provincial securities	
		British and Colonial securities	
		Foreign and Colonial securities	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the Indian Government	
		Bonds, debentures stocks and other securities whereon interest is guaranteed by the British or any Colonial Government	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by any Foreign Government	
		Ordinary stocks and shares of any Indian Presidency Bank	
		Debentures of any Railway in India	
		Debentures of any Railway out of India	

* These items are or have been included in the corresponding items in the First Schedule

† The words within quotations have been added by Act 13 of 1914

LIABILITIES	Rs	ASSETS	Rs
		Preference or guaranteed shares of any Railway in India	
		Preference or guaranteed shares of any Railway out of India	
		Ordinary stocks and shares of any Railway in India	
		Ordinary stocks and shares of any Railway out of India	
		House property in India	
		Do do out of India	
		Freehold and leasehold ground rents and rent charges in India	
		Life interests and reversions in India	
		Life interests and reversions out of India	
		Other investments in India (to be specified)	
		Other investments out of India (to be specified)	
		Agents' balances	
		*	
		*	
		*	
		Cash —	
		On deposit	
		In hand and on current account	
		Other assets (to be specified)	
Rs		Rs	

NOTE 1 —When parts of the assets of the company are specifically deposited under local laws in various places out of India, as security to holders of life assurance policies there issued each such place and the amount compulsorily lodged therein must be specified

NOTE 2 — A balance sheet in the above form must be rendered in respect of the annuity fund if the investments of that fund are distinct from those of the life assurance fund

NOTE 3 —The balance sheet must state how the values of the Stock Exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made, a certificate must be appended, signed by the same persons as signed the balance sheet to the effect that in their belief the assets set forth in the balance sheet are in the aggregate fully of the value stated therein less any investment reserve fund taken into account

NOTE 4 —A certificate must be appended hereto, signed by the same persons as signed the balance sheet (Form A) and by the auditor, to the effect that no part of any such fund has been applied, directly or indirectly, for any purpose other than the class of business to which it is applicable

NOTE 5 —Companies having investments with any uncalled liability shall state separately the full amount thereof

NOTE 6 —Particulars must [illegible]
except loans on [illegible]
time during the [illegible]
other company in [illegible]
the position either of director or officer

* These items are or have been included in the corresponding items in the First Schedule

THE FOURTH SCHEDULE

(See sections 8 and 9)

STATEMENT RESPECTING THE VALUATION OF THE LIABILITIES UNDER LIFE POLICIES AND ANNUITIES OF THE——, TO BE MADE AND SIGNED BY THE ACTUARY

(The answers should be numbered to accord with the numbers of the corresponding questions)

1 The *date up to which the valuation is made*

2 The general principles adopted in the valuation, and the method followed in the valuation of particular classes of assurances, including a statement of the method by which the net premiums have been arrived at, and whether these principles were determined by the instrument constituting the company or by its regulations or bye laws or how otherwise, together with a statement of the manner in which policies on under average lives are dealt with

3 The table or tables of mortality used in the valuation In cases where the tables employed are not published, specimen policy values are to be given at the *rate of interest employed in the valuation, in respect of whole-life assurance policies* effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for 5 years, 10 years and upwards at intervals of five years respectively, with similar specimen policy values in respect of endowment assurance policies, according to age at entry, original term of policy and duration

4 The rate or rates of interest assumed in the calculations

5 The actual proportion of the annual premium income (if any), reserved as a provision for future expenses and profits, separately specified in respect of assurances with immediate profits, with deferred profits, and without profits (If none, state *how this provision is made)*

6 The consolidated (revenue account) since the last valuation, or in case of a company which has made no valuation, since the commencement of the business, (This return should be made in the form annexed No return under this heading will be required where a statement under this schedule is deposited annually)

7 The liabilities of the company under life policies and annuities at the date of the valuation showing the number of policies, the amount assured and the amount of premiums payable annually under each class of policies, both with and without participation in profits, and also the net liabilities and assets of the company with the *amount of surplus or deficiency (These returns to be made in the forms* annexed)

8 The principles upon [illegible] among the share holders and policy holders is made, [illegible] instrument constituting the [illegible] wise, and the number of ye[illegible] and (*b*) vests

9 The results of the valuation showing—

(1) the total amount of profit made by the company allocated as follows —

(*a*) among the policy holders with immediate participation, and the number and amount of the policies which participated ,

(*b*) among policy holders with deferred participation and the number and amount of the policies which participated ,

(*c*) among the share holders

(*d*) to reserve funds, or other accounts

(*e*) carried forward unappropriated

(2) specimens of bonuses alloted to whole life assurance policies for Rs 1000 effected at the respective ages of 20 30 40 and 50, and having been respectively in force for 5 years 10 years and upwards at intervals of 5 years respectively, together with the amounts apportioned under the various modes in which the bonus might be received with similar specimen bonuses and particulars in respect of endowment assurance policies according to age at entry, original term of policy, and duration

(FORM REFERRED TO UNDER HEADING NO 6 IN FOURTH SCHEDULE)

Consolidated Revenue Account of the for years.
Commencing and ending

	Rs		Rs	Rs
Amount of life assurance fund at the beginning of the period		Claims under policies paid and outstanding.—		
Premiums		By death		
Consideration of annuities granted		By maturity..		
Rs.				
Interests, dividends and rents		Surrenders		
Less income tax thereon		Annuities		
Other receipts (accounts to be specified) .		Bonuses in cash		
		Bonuses in reduction of premiums		
		Commission		
		Expenses of management		
		Other payments (accounts to be specified)...		
		Amount of life assurance fund at the end of the period as per Third Schedule		
Rs ...		Rs ...		

NOTE —If any sum has been deducted from the expenses of management account and taken credit for in the balance-sheet as an asset, the sum so deducted to be separately shown in the above statement

(FORM REFERRED TO UNDER HEADING NO 7 IN FOURTH SCHEDULE)

Summary and valuation of the policies of the.... ....as at.. 19

—	Particulars of the policies for valuation				Valuation: Value by the Table, interest per cent			
	Number of policies	Sums assured and bonuses	Office yearly premiums	Net yearly premiums	Sums assured and bonuses	Office yearly premiums.	Net yearly premiums	Net liability
ASSURANCES.								
1 —*With immediate participation in profits.*								
For whole term of life, other classes (to be specified)								
Extra premiums payable.								

II.—*With deferred participation in profits*			
For whole term of life			
Other classes (to be specified)			
Extra premiums payable			
TOTAL ASSURANCES WITH PROFITS			
III.—*Without participation in profits*			
For whole term of life			
Other classes (to be specified)			
Extra premiums			
TOTAL ASSURANCES WITHOUT PROFITS			
Total assurances			
Deduct reassurances (to be specified according to class in a separate statement)			
Net amount of assurances			
Adjustments, if any (to be separately specified)			
ANNUITIES ON LIVES			
Immediate			
Other classes (to be specified)			
TOTAL OF THE RESULTS			

NOTE 1.—The term extra premium in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If policies are issued in or for any country at rates of premium deducted from tables other than the Eupropean mortality tables adopted by the company separate schedules similar in form to the above must be furnished.

NOTE 2.—Separate returns and valuation results must be furnished in respect of classes of policies valued by different tables of morality, or at different rates of interest also for business at other than Europe’n rates.

NOTE 3.—In cases also where separate valuations of any portion of the business are required under local laws in places outside British India, a summary statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums and the total net liability on the bases as to mortality and interest adopted in each such place, with a statement as to such bases respectively.

(FORM REFERRED TO UNDER HEADING NO. 7 IN FOURTH SCHEDULE.)

Valuation Balance Sheet of——as at——19

Dr.	Rs	Cr.	Rs
To net liability under life assurance and annuity transactions (as per summary statement provided in Fourth Schedule)		By life assurance and annuity funds (as per Balance sheet under Third Schedule)	
To surplus, if any		By deficiency, if any	

THE FIFTH SCHEDULE

(See Section 10)

STATEMENT OF THE LIFE ASSURANCE AND ANNUITY BUSINESS OF THE ON THE 19 , TO BE SIGNED BY THE ACTUARY.

than European rates

1 The published table of tables or premiums for assurances for the whole term of life and for endowment assurances which are in use at the date above-mentioned

2 The total amount assured on lives for the whole term of life which are in existence at the date above mentioned, distinguishing the portions assured with immediate profits with deferred profits and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the youngest to the oldest ages, the basis of division as to immediate and deferred profits being stated

3 The amount of premiums receivable annually for each year of life after deducting the abatements made by the application of bonuses in respect of the respective assurances mentioned under heading No 2, distinguishing ordinary from extra premiums A separate statement is to be given of premiums payable for a limited number of years classified according to the number of years' payments remaining to be made

4 The total amount assured under endowment assurances specifying sums assured and office premiums separately in respect of each year in which such assurances will mature for payment The reversionary bonuses must also be separately specified, and the sums assured with immediate profits, with deferred profits, and without profits separately returned

5 The total amount assured under classes of assurance business, other than assurances dealt with under questions 2 and 4 distinguishing the sums assured under each class and stating separately the amount assured with immediate profits, with deferred profits and without profits, and the total amount of reversionary bonuses

6 The amount of premiums receivable annually in respect of each such special class of assurances mentioned under Heading No 5, distinguishing ordinary from extra premiums

7 The total amount of premiums which has been received from the commencement upon pure endowment policies which are in force at the date above mentioned

8 The total amount of immediate annuities on lives, distinguishing the amounts for each year of life, and distinguishing male and female lives

9 The amount of all annuities on lives other than those specified under Heading No 8, distinguishing the amount of annuities payable under each class, and the amount of premiums annually receivable

10 The average rate of interest yielded by the assets, whether invested or uninvested constituting the life assurance fund of the company, calculated upon the mean fund of each year during the period since the last investigation without deduction of income tax

It must be stated whether or not the mean fund upon which the average rate of interest is calculated includes reversionary investments

11 A table of minimum values if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a statement of the method pursued in calculating such surrender values, with instances of the application of such method to policies of different standing and taken out at various interval ages from the youngest to the oldest

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THE SIXTH SCHEDULE

(See sections 24 and 25)

RULES FOR VALUING ANNUITIES, LIFE POLICIES AND LIABILITIES

Rule for valuing an annuity

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and, where such tables cannot be ascertained or adopted to the satisfaction of the Court, then according to such rate of interest and table of mortality as the Court may direct

Rule for valuing a policy

... value of the ... is payable, ... ment of the ... rate, and the ... aid rate of ... urred by the ... penses and other charges

Rule for valuing a liability

The liquidator, in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, is to ascertain the value of the liability of the company to each such person, and give notice of such value to such persons in such manner as the Court may direct, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court

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THE INDIAN INSURANCE COMPANIES ACT, 1928

ACT No XX OF 1928

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 25TH SEPTEMBER, 1928

An Act further to amend the Indian Life Assurance Companies Act, 1912, for certain purposes and to provide for the collection of statistical information in respect of insurance business other than life assurance business

WHEREAS it is expedient further to amend the Indian Life Assurance Companies Act, 1912* for certain purposes hereinafter appearing, and to provide for the collection of statistical information in respect of insurance business other than life assurance business, It is hereby enacted as follows —

Notes —'The objects of this Bill are (1) to remove a defect in the Indian Life ...

PART I

Preliminary.

Short title, extent and commencement

1 (1) This Act may be called the Indian Insurance Companies Act, 1928

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

* VI of 1912

(3) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint

Notes—In the absence of sub section (3) the Act would have come into force from the date of the assent of the Governor General *i e*, from 25th September, 1928

PART II

Amendments of the Indian Life Assurance Companies Act, 1912

Amendment of section 7, Act VI of 1912

2 (1) Section 7 of the Indian Life Assurance Companies Act, 1912* (hereinafter in this Part referred to as the said Act), shall be renumbered as sub section (1) of that section, and to that sub-section as so renumbered, after clause (*d*) the following clauses shall be added namely :— (*Vide* s 57 (1) and (3) of Act VI of 1912)

Insertion of new section 26A in Act VI of 1912

3 After section 26 of the said Act the following section shall be inserted, namely : (*Vide* 26A of Act VI of 1912)

Notes—*Vide* notes under section 2

Amendment of section 33, Act VI of 1912

4 In section 33 of the said Act for the words and figures "section 7 to 12" the words, figures and letters "clauses (*a*), (*b*) (*c*) or (*d*) of sub sections (1) of section 7, sections 8 to 12," shall be substituted

Notes—This alteration is necessitated by the alterations made by s 2

Amendment of the First Schedule, Act VI of 1912

5 Statement (D) in the First Schedule to the said Act shall be omitted

Notes—This alteration is also necessary by virtue of the previous amendments

PART III

Provisions as to Insurance Business other than Life Assurance Business

Definitions

6 In this Part, unless there is anything repugnant in the subject or context,—

(*a*) "certified", in relation to any copy or translation of a document required to be furnished by or on behalf of an insurance company, means certified by a responsible officer of the company to be a true copy or a correct translation, as the case may be,

(*b*) "insurance company" means any person who transacts in British India the business of effecting contracts of insurance against any risk,

(*c*) expressions used in this Act and defined in the Indian Life Assurance Companies Act, 1912, shall have the meanings assigned to them respectively in that Act

Notes—"Insurance companies or associations may be primarily divided into those which are known as mutual and those which are known as proprietory—*Macgillivary's Insurance Law*, p 1

Deposit of accounts etc, with Governor General in Council

7 Every insurance company which does not transact life assurance business in British India shall, within six months after the close of each financial year or within such further period as the Governor General in Council may in any case for special reasons allow, deposit with the Governor General in Council four copies of every report on the affairs of the company, and of every balance sheet, revenue account and

* VI of 1912

[illegible] ear, which has been submitted to [illegible] lso, in the case of a company whose [illegible] four copies of such of the aforementioned documents as are required by law to be submitted to the Government of the country in which the head office is situated

Notes —A foreign company is deemed to carry on business in the United Kingdom when it has officers or agents therein conducting business on its behalf *Dunlop Pneumatic Tyre Co v Actien Gesellschaft & Co*, (1902) 1 K B 342, *Compania v Law*, (1899) A C 431

Statements to be appended to revenue account

8 The following statements shall be appended to every revenue account (other than a life assurance revenue account) deposited by an insurance company with the Governor General in Council in compliance with section 7 or with the provisions of the Indian Life Assurance Companies Act 1912,* as respects the year and the class of insurance business to which the revenue account relates, namely, statements showing—

(1) in respect of premium income for which credit is taken in the revenue account, the amount of premiums derived from business effected in India

(2) in respect of claims, the amount of the claims paid in the year of account under policies effected in India—

(*a*) to claimants in India, and

(*b*) to claimants outside India

Notes —This is an improvement on the British Companies Act 1908 section 274 (3) whereby foreign companies are required only to file a statement in the form of a balance sheet containing a summary of its share capital its liabilities and assets

Statements of Indian assets

9 There shall be appended to every balance sheet deposited by an insurance company with the Governor General in Council in compliance with section 7 a statement showing in such form as the Governor General in Council may prescribe a classified summary of the investments of the company in India in Government securities and in Indian concerns and the other Indian assets held by the company

Notes —This provision is also new

Signing of documents

10 At least one copy of every document deposited by an insurance company with the Governor General in Council in accordance with the requirements of section 7, section 8 or section 9 shall be signed in the manner provided in section 11 of the Indian Life Assurance Companies Act, 1912 *

Notes —Every document must be signed by the chairman and two directors of the company, and by the principal officer of the company—*vide section 11 of the Indian Life Assurance Companies Act* 1912

Certified copies of vernacular documents

11 If any portion of any document required to be deposited under section 7 section 8 or section 9 by an insurance company with the Governor General in Council is not written in the English language a certified translation thereof shall be furnished along with each copy of the document

Notes —Any document mentioned in section 8 and 9 may be in vernacular but in that case a certified translation of the same is to be deposited

Particulars to be filed

12 Every insurance company which does not transact life assurance business in British India shall within one month from the commencement of this Act or before it

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begins to carry on business, whichever is later, furnish to the Governor General in Council—

(a) the full address of the principal office of the company in British India;

(b) the names of the directors, the principal officer and the auditor of the company in British India,

(c) a statement of the classes of insurance business carried on or intended to be carried on by the company in British India,

(d) a certified copy of the charter, statutes, deed of settlement or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof,

(e) in the case of any such company established outside British India, the names and addresses of some one or more persons resident in British India, authorised to accept on behalf of the company service of process and any notice required to be served on the company,

and, in the event of any alteration being made in the address of the principal office or in such classes of business or in any such instrument as aforesaid or in the name of any such person, the company shall forthwith furnish to the Governor General in Council particulars of the alteration

Notes—This section corresponds to section 19 of the British Assurance Companies Act, 1909 A foreign company is deemed to carry on business in this country when it has officers or agents therein conducting business on its behalf, (1902) I K B 342, (1899) A C 431

Custody and inspection of documents

13 Every document deposited with the Governor General in Council, in compliance with section 7, section 8 or section 9, or a certified copy of such document, shall be kept by the Registrar, and any such documents or copies shall be open to inspection, and any person may procure a copy of any such document or of any part thereof on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied

Notes—This section corresponds to section 20 of the British Assurance Companies Rules, 1910

Evidence of documents

14 (1) Every document deposited with the Governor General in Council in compliance with section 7, section 8 or section 9 which has been certified by the Registrar to be a document so deposited shall be deemed to be a document so deposited

(2) Every such document purporting to be certified by the Registrar to be a copy of a document so deposited shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document, unless some variation between it and the original document be proved

Notes—Sub section (1) corresponds to section 21 (1) of the British Assurance Companies Act 1909 and section 29 of the Indian Life Assurance Act VI of 1912 Any document purporting to be certified by the Registrar or an Assistant Registrar as a copy of a document deposited with the Board of Trade is *prima facie* evidence of the contents of the original document—*Macgillivary's Insurance Law*, p 41 Sub-section (2) corresponds to section 21 (2) of the British Assurance Companies Act, 1909 and section 30 of the Indian Life Assurance Act 1912

Summary of accounts etc, to be published

15 The Governor General in Council shall, from time to time cause to be published, in such manner as he may direct, a summary of the accounts, balance sheets and statements deposited with him in compliance with section 7, section 8 or section 9, and may append to such sum-

mary any note of the Governor General in Council thereon and any correspondence in relation thereto

16 Any insurance company which make default in complying with any of the requirements of this Part, and every director, manager or secretary, or other officer or agent of, or partner in the company who is knowingly a party to the default, shall be punishable in the manner provided in section 34 of the Indian Life Assurance Companies Act, 1912 *

Penalty for non compliance with Act

Notes—*A penal section must be strictly construed This section corresponds to* section 23 of the British Assurance Companies Act, 1909 and section 34 of the Indian Life Assurance Companies Act *1912*

17 If any account, balance sheet, statement or other document required

Penalty for falsifying documents

punishable in the manner prov
Companies Act, 1912 *

Notes—This section corresponds to section 35 of the Indian Life Assurance Companies Act, 1912 and section 24 of the British Assurance Companies Act, 1909

18 No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this *Act*

Cognizance of offences

Notes—This section corresponds to section 36 of the Indian Life Assurance Companies Act 1912 The trial of an offence under this Act is entrusted to an experienced magistrate

19 A person transacting

Application of Part III to re insurance business

shall not by reason only of that Act, be deemed to be transacting insurance business of that class

20 The Govern ... notification in the *Gazette* ... to such restrictions and ... fit exempt from all or any of the provisions ... surance society registered under the Provident

Exemption

THE INDIAN LIMITATION ACT, 1908

ACT NO IX OF 1908

RECEIVED THE G G S ASSENT ON THE 7TH AUGUST 1908

An Act to consolidate and amend the Law for the Limitation of Suits and for other purposes

...olidate and amend the law relating to ...tain applications to Court, and whereas acquiring by possession the ownership of easements and other property, It is hereby enacted as follows —

Notes—The very object of consolidation is to collect the statutory law bearing upon a particular subject and to bring it down to date in order that it may form a

* XI of 1912

PART II

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

Dismissal of suits etc, instituted etc, after period of limitation

3 *Subject to the provisions contained in sections 4 to 25 (inclusive)* every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence

Explanation—A suit is instituted, in ordinary cases when the plaint is presented to the proper officer, in the case of a pauper when his application for leave to sue as a pauper is made and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator

Notes—A *word 'suit' ordinarily means a Civil Proceeding instituted* by the presentation of a plaint 60 I A 13=54 A 1067=37 C W N 379=1933 A L J 175=A I R 1933 P C 63=64 M L J 40 (P C) An appeal differs from an application 2 M 230, 8 C W N 906 The Court is at liberty to decide the question of limitation even when not raised 28 C 86=5 C W N 160, 39 Ind Cas 154 6 M 325, 21 C W N 564 22 C L J 519, 9 C W 59, 28 M 67, 11 C W N 960, 44 Ind Cas 570 The provisions of this section are mandatory 29 C 162, 6 C W N 641=25 M 367 (P C), 39 Ind Cas 154, 46 Ind Cas 569 At any stage of the proceeding such a question can be raised 40 Ind Cas 661, 20 Ind Cas 360, 36 Ind Cas 960, 35 Ind Cas 337 Such a question can be raised even in appeal for the first time 45 B 920, 28 C 86 9 C 635, 46C 455; 28 M 97, 6 C L R 267 160 Ind Cas 785, 15 A 123, 11 C W N 960=34 C 941, but see 60 Ind Cas 280, 9 C W N 56, 34 C 941 In second appeal it is allowed only when it depends on the pleading and not on question of fact for which there is no finding 1923 Cal 283, 28 Ind Cas 378, 44 Ind Cas 890, 13 Ind Cas 792, 16 Ind Cas 418 The date of the presentation of the plaint is the date of the institution of suit 4 C W N 318, 29 A 249, 31 C 75, 32 M 105, 20 M 319, 27 A 197, 1 Pat L J 420 A Court is assumed to decide a question of limitation unless it is otherwise shown 4 Pat L T 464=101 Ind Cas 695=A I R 1927 Pat 261

When on the face of the plaint the suit is barred by limitation the Court is bound to decide it, even if no objection is taken by the other side A I R 1934 [illegible] see also A I R [illegible] All 16=1931 A L J 858 Whether the suit is [illegible] adings A I R 1933 [illegible] 8 Rang 581=A I R

Explanation—*Vide* A I R 1933 P C 63 (P C)=54 A 1067=1933 A L J 175=60 I A 13 36 Bom L R 84=A I R 1934 Bom 91 38 C W N 900=A I R 1934 Cal 833 32 Bom L R 1343=A I R 1931 Bom 47

When Court is closed when period expires

4 Where the period of limitation prescribed for any suit appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re opens

[illegible] 2 C 128 It [illegible], 23 A 277, [illegible] o M 246 A [illegible] plaint, the period of limitation for fil ng which expires when the Court is closed for [illegible] s to be treated as presented [illegible] vacation for urgent work. [illegible] when the presiding officer [illegible] ked in the case of a suit [illegible] cribed whether as a matter of grace or otherwise) and not merely the periods prescribed in the first sche[illegible] 6 M L. J 23=21 Ind Cas 770 The principle underlying this section is [illegible] party has to do something before a certain day and if upon that day or [illegible] day, he cannot do that thing by reason of the act of the Court, then he is

[illegible] existing at the time when the consolida[illegible] visions of this Act must be strictly and [illegible] C 165 (P C)=59 I A 283=36 C W N 803=63 M L J 320=[illegible], see also A I R 1932 Cal 422=144 Ind Cas 150 English decisions need not be referred to 143 Ind Cas 315=36 C 1138=60 C 87=A I R 1933 Cal 325 55 M 758=A I R 193[illegible] Mad 516 Civil Procedure and Limitation Act should be construed as one system as explanatory of each other A I R 1931 Pat 241 (F B)=10 Pat 670 Intention of law of limitation is not to give right but to interpose bar after certain period to enforce certain right Right is not however extinguished 54 A 525=A I R 1934 All 543 General article does not govern when there is particular article to cover case 130 Ind Cas 157=A I R 1931 Nag 47=13 N L J 47

The word suit does not include application 2 C 336 (F B), see also 22 M 256

PART I

PRELIMINARY

Short title extent and commencement

1 (1) This Act may be called the Indian Limitation Act, 1908

(2) It extends to the whole of British India, and

(3) This section and section 31 shall come into force at once The rest of this Act shall come into force on the first day of January, 1909

Definitions

2 In this Act, unless there is anything repugnant in the subject or context —

(1) 'applicant includes any person from or through whom an applicant derives his right to apply

(2) [illegible]

(3) [illegible] to pay money t[illegible] [illegible]pecified act is performed or is not performed as the case may be

(4) 'defendant includes any person from or through whom a defendant derives his liability to be sued

(5) 'easement includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in or attached to or subsisting upon, the land of another

(6) foreign country means any country other than British India

(7) 'good faith nothing shall be deemed to be done in good faith which is not done with due care and attention

(8) plaintiff includes any person from or through whom a plaintiff derives his right to sue,

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited or on demand, or at sight

(10) 'suit does not include an appeal or an application and

(11) "trustee does not include a benamidar a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong doer in possession without title

Defendant —*Vide* 16 B 197 18 B 37, 13 B 160

Easement —includes *profits a pendre* 23 C 55 see also 18 C L J 399 A I R 1934 Pat 420=148 Ind Cas 420

Suit —The word suit does not include application 2 C 336 (F B) It terminates in a decree 22 M 256, 1 A 97 (F B)

Trustee —*Vide* 9 W R 187, 11 W R 72

PART II

Limitation of Suits, Appeals and Applications

3 Subject to the provisions contained in sections 4 to 25 (inclusive) every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence

Dismissal of suits etc, instituted, etc, after period of limitation

Explanation—A suit is instituted, in ordinary cases when the plaint is presented to the proper officer, in the case of a pauper when his application for leave to sue as a pauper is made, and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator

Notes—A word 'suit' ordinarily means a Civil Proceeding instituted by the presentation of a plaint 60 I A 13=54 A 1067=37 C W N 379=1933 A L J 175=A I R 1933 P C 63=64 M L J 40 (P C) An appeal differs from an application 2 M 230, 8 C W N 906 The Court is at liberty to decide the question of limitation even when not raised 28 C 86=5 C W N 160, 39 Ind Cas 154, 6 M 325, 21 C W N 564 22 C L J 519, 9 C W 59, 28 M 67, 11 C W N 960, 44 Ind Cas 570 The provisions of this section are mandatory 29 C 162, 6 C W N 641=25 M 367 (P C), 39 Ind Cas 154, 46 Ind. Cas 569 At any stage of the proceeding such a question can be raised 40 Ind Cas 661, 20 Ind Cas 360, 36 Ind Cas 960, 35 Ind Cas 337 Such a question can be raised even in appeal for the first time 45 B 920, 28 C 86 9 C 635, 46C 455, 28 M 97, 6 C L R 267, 160 Ind Cas 785, 15 A 123, 11 C W N 960=34 C 911, but see 60 Ind Cas 280, 9 C W N 56, 34 C 941 In second appeal it is allowed only [illegible] of fact for which there is no find[illegible] 890, 13 Ind Cas 792, 16 Ind [illegible] is the date of the institution of s[illegible] 105; 20 M 319, 27 A 197, 1 Pat L J 420 A Court is assumed to decide a question of limitation unless it is otherwise shown 4 Pat L T 464=101 Ind Cas 695=A I R 1927 Pat 261

When on the face of the plaint the suit is barred by limitation the Court is bound to decide it, even if no objection is taken by the other side A I R 1934 Rang 379, see also A I R 1932 All 16=1931 A L J 858 Whether the suit is in time should be decided on basis of the plaintiff s own pleadings A I R 1933 Lah 404 Section 3 does not apply to claim by a liquidator 8 Rang 581=A I R 1931 Rang 7[illegible]

Explanation—*Vide* A I R 1933 P C 63 (P C)=54 A 1067=1933 A L J 175=60 I A 13 36 Bom L R 84=A I R 1934 Bom 91 38 C W N 900=A I R 1934 Cal 833, 32 Bom L R 1343=A I R 1931 Bom 47

4 Where the period of limitation prescribed for any suit appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re opens

When Court is closed when period expires

Notes—This section applies only to suits, applications and appeals 2 C 128 It includes suits under s 77 of the Registration Act 1877 8 C 910, 28 A 48, 23 A 277; 4 C L J 188 but see 18 M 99, 6 C W N 771, 16 C W N 20, 20 M 246 A [illegible] when the Court is closed for [illegible] eated as presented [illegible] n for urgent work [illegible] e presiding officer [illegible] he case of a suit [illegible] hether as a matter [illegible] first schedule 26 [illegible] ion is that when a [illegible] ay or before that [illegible] he is entitled to

an extention of time over that period during which he was delayed by the Court's action 51 B 848=29 Bom L R 981=103 Ind Cas 540=A I R 1927 Bom 480 In calculating the time requisite for obtaining copies of decree and judgment which can be excluded from the time prescribed for preferring an appeal the *appellant is entitled to exclude the whole of the annual vacation* if the judgment was pronounced on the last day of the sitting of the Court before the vacation whether the appellant applied for copies on the day on which the Court re-opened or on some later date A I R 1934 Pat 4, see also 14 P L T 91, 15 P L T 369 Mere absence of presiding officer on leave is not tantamount to Court being closed A I R 1933 Lah 239=34 P L R 338=142 Ind Cas 307, but see A I R 1934 Lah 622=152 Ind Cas 618 There is nothing in ss 6, 8 and 12 to 16 to prevent suitors coming within those sections from having benefit of s 4 A I R 1932 Mad 139=61 M L J 675=55 M 28=34 M L J 650 Section 4 does not extend period of limitation 55 M 630=A I R 1932 Mad 287 (F B)

Extension of period in certain cases

5 Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable "by or under any enactment"* for the time being in force, may be prescribed therefor, when the appellant or ad sufficient cause for not preferring the

[illegible]

was misled by any [illegible]ming or computing within the meaning of this section

[illegible] discretion which in respect of jurisdic- [illegible]wer and discretion ought to be [illegible] words 'sufficient cause [illegible]ice when no negligence nor inaction [illegible]pellant 9 Bom L R 893 See also 30 C [illegible] [illegible]rt can extend time *vide*, 19 C W N 473 36 A 235, 38 Ind Cas 575 25 A 71 The Privy Council refused to interfere with the discretion of the High Court in refusing to admit an appeal beyond time when it was not satisfied that the High Court was wrong in the exercise of its discretion 30 C 309=30 I A 20 P C The Court should exercise its discretion in a [illegible] which judicial powers and discretion should be exercised 3 O C 36 A *bona fide* mistake on the part of a pleader in making calculation is a sufficient cause 17 C W N 807, see also 28 A 414, 12 Ind Cas 677, 46 C L J 357, 101 Ind Cas 777 A I R 1934 Pesh 57, 11 O W N 653 36 C W N 420, A I R 1933 Lah 568, 61 M L J 710 All that is necessary is that the Court should be satisfied with the justice of the [illegible] 17 C L J 596, 16 C L J 366 This section of the [illegible] name of respondent [illegible] 12 A L J 299= [illegible]gs under the Land Acquisition [illegible] 1927 Pat 333 This section gives the Court a discretion but that discretion is to be exercised in a judicial manner 104 Ind Cas 241 This section applies when the period of limitation has actually expired 30 N L R 294=149 Ind Cas 956=A I R 1934 Nag 145 Excuse of delay depends upon the judicial discretion of the Court 152 Ind Cas 419=11 O W N 1359 Time should not be extended where the applicant is guilty of gross negligence 11 O W N 256=A I R 1934 Oudh 131 Proof of good faith is necessary to bring a case under this section 10 O W N 1247=A I R 1934 Oudh 10 As the power under this section is discretionary the appellate Court should *not interfere* with the discretion of the lower Court 35 P L R 374

Legal disability

6 (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be

* The words within quotations have been substituted by Act X of 1922

reckoned, a minor, or insane or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule

(2) Wh- ich the period of limitation is to or where, before his disability h he may institute the suit or make after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed

(3) Where the disability continues up to the death of such person his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed

(4) Where such representative is, at the date of the death, affected by any such disability, the rules contained in sub sections (1) and (2) shall apply

Illustrations

(*a*) The right to sue for the hire of a boat accrues to A during his minority He attains majority four years after such accruer He may institute his suit at any time within three years from the date of his attaining majority

(*b*) A right to sue accrues to Z during his minority After the accruer, but while Z is still a minor, he becomes insane Time runs against Z from the date when his insanity and minority cease

(*c*) A right to sue accruers to X during his minority X dies before attaining majority, and is succeeded by Y, his minor son Time runs against Y from the date of his attaining majority

Not-

disabil ty may institute a suit within the same period after the d sability has ceased ... ate but subject to the period ... than three years from the ... P L R 9 This section is ... not apply to proceedings to ... =37 C W N 184=A I R 1934 Cal 508 Insolvency is not a disability under s 6 A I R 1932 Mad 170=61 M L J 688=34 M L W 783 Child in mother s womb can not be regarded as a minor for purposes of s 6 A I R 1932 Mad 456=60 M L J 521 A lunatic ... 934 A L J ... entitled to ... All 968, 13 ... of the minor ... e on account ... nority 9 C 181 This section applies even when some only, and not all of the judgment creditors are affected by legal disability 27 A 67, 1 A L J 408 note Where limitation once begins to run no subsequent disability or inability to sue can stop running of time There is no distinction between voluntary and involuntary disabilities 18 Ind Cas 306 The privilege conferred by this section is not transferable and an assignee from a minor must file the suit either within the ordinary period provided for the suit or on the date of the transfer if the transferor s right subsists till that date 18 O C 34=27 Ind Cas 118 Where a promissory note is taken in the name of the guardian alone, he is the person entitled to sue on it and the minor is not entitled to invoke the aid of this section 28 Bom L R 1431=100 Ind Cas 93

Disability of one of several plaintiffs or applicants

7 When one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person,

time will run against them all but where no such discharge can be given ... one of them becomes capable of ... the others or until the dis

Illustrations

(*a*) A incurs a debt to a firm of which B, C and D are partners B is insane and C is a minor D can give a discharge of the debt without the concurrence of B and C Time runes against B, C and D

(*b*) A incurs a debt to a firm of which E, F and G are partners E and F are insane and G is a minor Time will not run against any of them until either E or F becomes sane or G attains majority

... limitation will run as against ... ect of that portion of the debt to ... nt decree holders can not give ... M W N 1911, 307 The last ... oint executors or claimants being ... on creditor is a joint creditor within meaning of this section 15 Ind Cas 664 The cause of action for a suit by the legal representatives of a deceased partner to sue for account arises from the partnership contract and the right of each partner to have an account taken upon the dissolution of the firm, and all the representatives must join in the suit This ... ving immov ... 29, Time ... etent to sue ... of decrees ... e discharge without others consent 35 Bom L R 388=A I R 1933 Bom 245=145 Ind Cas 164 In joint family only manager can give valid discharge 35 Bom L R 388=A I R 1933 Bom 245, see also A I R 1933 Lah 479=34 P L R 384, A I R 1931 Lah 5, A I R 1934 Mad 479=67 M L J 27

8 Nothing in section 6 or in section 7 applies to suits to enforce rights of pre emption, or shall be deemed to extend for more than three years from the cessation of the disability or the death of the person affected thereby the period within which any suit must be instituted or application made

Special exceptions

Illustrations

(*a*) A to whom a right to sue for legacy has accrued during his minority, attains majority eleven years after such accruer A has under the ordinary law only one year remaining within which to sue But under section 6 and this section an exten ... rs from the ...

... e is insane ... he ordinary ... a suit No ...

... t accrues to A, who is an idiot A dies three years after the accruer his idiocy continuing up to the date of his death A's representative in interest has, under the ordinary law nine years from the date of A's death within which to bring a suit Section 6 read with this section does not extend that time except where the representative is himself under disability when the representation devolves upon him

Notes—All suits must be brought within 3 years after the disability ceases 5 C W N 545

Continuous running of time

Provided that, where letter ... have been granted to his d ... suit to recover the debt shall be suspended while the administration continues

Notes—A grandson, unlike a son, has no right to set aside an alienation made by his grandfather Even if he should have such power his birth would not give him a new cause of action The cause of action would be the date on which the

Vhere time began to run before the birth

subsequent birth and minority 2 C P.

R 387 This section has no application to a suit by landlord to enforce a right of pre emption over certain absolute occupancy field which was sold in execution of a decree 6 C P L R 67 Parties to a contract may agree to postpone the accrual of any rights under it but they cannot postpone the period of limitation since under s 9 it follows that when once limitation begins to run, it cannot be stopped by any subsequent event 4 L W 8 =31 M L J 231 The period of limitation can not be suspended once the period of limitation has begun to run unless the suspension is itself provided for in the Act 49 A 565=25 A L J 425=102 Ind Cas 96=A I R 1927 All 446, 35 Bom L R 440=A I R 1933 B 276, A I R 1933 Pat 224=12 Pat 261

Suits against express trustees and their representatives

10 Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time

"For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.' *

Scope of section 10—Section 10 is designed to meet a suit brought for the purpose of following misapplied trust funds for the benefit of trust 32 M L J 85, 20 Bom L R 441 Section 10 is applicable only in the case of express trusts 45 M 415=42 M L J 119, A I R 1925 P 68 The word 'vesting in section 10 of the Limitation Act, means merely 'properly having control of the property" A I R 1926 M 109=49 M L J 468 The word "vest implies that the property becomes in law the property of the trustee *Ma Thein May* v *P O Ken*, 3 Rang 206=A I R 1925 Rang 289, see also 61 C 119=58 C L J 502

Under the law of limitation, executors and administrators are not trustees for specific purposes within the meaning of this section 5 Ind Cas 332=7 M L T 123 The expression used in this section 'for the purpose of following in his hands such property means for the purpose of recovering the property for the trusts in question, *i e* for the purpose for which the property was specifically vested in the trustee 20 B 51 To claim the benefit of this section the suit against the trustee must be for the purpose of following the trust property in his hands 5C 910 This section applies to express trusts alo e and excludes implied trusts and those resulting from operation of law 132 P R 1907, 5 C 455, see also A I R 1934 Mad 273, A I R 1934 Mad 542 A relation between a son in la and a father in law is not

a son in la by

to his father

N 606 This section applies to a suit brought by the reversioners of a lady whose property was put in charge of a *sapinda* to recover the property from the legal representatives of the *sapinda* 101 Ind Cas 427 A specific purpose within the meaning of this section must be a purpose that is either actually and specifically defined in the deed of trust or a purpose which from the specified terms can be certainly affirmed 2 Bom L R 241=103 Ind Cas 418 Section 10 does not apply unless there is trust for specific purpose 60 M L J 1=35 C W N 145=33 Bom L R 168=58 I A 1=A I R 1931 P

Companies are not trustees for specific purpose 128 M L J 280=A I R 1931 Mad 58 For the purp the hands of the trustees referred to in the er purpose of restoring it to the trust which is specifi tion A I R 1934 Cal. 87= 61 C. 119=58 C L J 1=35 Bom L R 1091

* Added by Act 1 of 19)

Reason of the amendment—This amendment was made as a result of the decisions of the Privy Council in *Vidyaruthi* v *Balusami*, 44 M 831=41 M L J 346=(1921) M W N 419=48 I A 302 and *Haji Abdur Rohim* v *Narayan Das*, 14 M L J 624=50 C 329=32 M L T (P C) 153=71 Ind Cas 646=25 Bom L R 670=38 C L J 242=28 C W N 121=50 I A 84=(1923) P C 44 Neither under the Hindu law nor in the Mahomed
or a *mutwali*, in the case of dedicatio
ever property he holds for the idol or
beneficial interests regulated by custom
danashin nor the *Mutwali* has any rig
property is not vested in him and he is not trustee in the technical sense 50 C 329 As a result of these two rulings it was settled law that a *Dharmakarta Mahant* or manager of a Hindu religious property or the *Mutwali* or *Sajjadanashin* in whom the management of Muhammadan endowments is vested are not trustees within the meaning of the word as used in section 10 of the Limitation Act, for the reason that the property does not vest in them The result was that when a suit was brought against a person not being an assign for valuable consideration, endowments of that nature were not protected—*Statement of Objects and Reasons* Section 10 as amended now puts Hindu and Muhammadan religious endowments on the same footing as other trust funds which definitely vest in a trustee *Ibid* *Shebaits'* possession cannot be adverse 60 C 54=A I R 1933 Cal 295 The amendment by Act I of 1929 is not retrospective in effect and does not apply to suits instituted prior to it 66 M L J 431=A I R 1934 P C 77=38 C W N 400=61 I A 50=56 A 111 (P C)

11 (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act

Suits on foreign contracts

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule

Notes—The law of limitation is *lexfore* not *lex loci contractus* and a foreign rule of limitation is no defence to a suit instituted in British India on a contract entered into in a foreign country unless such rule not only bars the remedy but also extinguishes a right 35 Ind Cas 741

PART III

Computation of Period of Limitation

12 (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded

Exclusion of time in legal proceedings

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed shall be excluded

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded

Notes—The time requisite for obtaining a copy of the decree must be excluded in computing the period of limitation prescribed for an appeal and also the time requisite for obtaining a copy of the judgment on which it is founded, must be excluded 14 Bur L R 8, see also 33 P R 1895, 6 P R 189, 12 C L R 541 What is meant by the time requisite for obtaining a copy,' is the time which it

takes an appl ... diligence 6 C P L R 13 ; 3 C. W ... '09 ; 4 C P L R 188 , see also 36 C W. ... I 451 , A I R 1932 Mad 588 , A I R 1933 Nag 362 ; A I R 1931 Pat 60=14 P L T 91 , A I R 1934 Pesh 9=35 P L R 274 ; A I R 1934 Mad 306=65 M L J 687 (F B)=57 M 560 ; 11 O W N 1359 ; A I R 1934 All 367=1933 A L J 1631 , 146 Ind Cas 931 The time occupied in transmitting copies by post cannot be deducted in computing the period of limitation 14 C P L R 40 "Time requisite' means time property required 137 Ind Cas 5?6=36 C W N 469=A I R 1932 Cal 331 (F B) Whether s 12 can be invoked depends upon facts of each particular case *Ibid* Time to be excluded under the section is that between date of application and date of despatch A I R 1933 Pesh 22=142 Ind Cas 230 see also A I R 1933 Rang 38 Delay in drawing up decree is not excluded 29 N L R 220=A I R 1933 Nag 125=143 Ind Cas 745 , A I R 1934 Cal 543=61 C 306=38 C W N 702 Period during which copy is stopped for want of funds is time requisite A I R 1933 Nag 218 , A I R 1934 Lah 469=35 P L R 713 When an appeal was filed by a vakil who had no vakalatnama, but one was produced later and attached to the record the appeal must be taken for purposes of limitation to have been filed on the later date 13 C L J 544 This section does not require that an application for copy should be made by the party himself 23 Ind Cas 209 This section is within the legislative powers of the ... 18 C W N 1006 In appeals the ... he date on which the decree was ... 868 (F B) , 34 Ind Cas 867 An ... obtaining his copy in the manner prescribed in the rules of the copyist department 34 Ind Cas 458 This section is onl ... ign Court A I ... computing the ... e Land Acquisi- ... on for copies of ... 34 Lah 135=A I R 1934 Lah 125 , see also 23 Ind Cas 209 , 29 A 204 , 43 M 633 Sub section (2) is applicable to appeals from decrees or ... High Court under cl 13 of the Letters Pat- ... to the rules of the Patna High Court no ... for Letters Patent appeal, sub section (2) has no application A I R 1934 Pat 353=15 P L T 301=151 Ind Cas 107 , see also A I R 1934 Lah 304=150 Ind Cas 781 Period is to be reckoned from the date on which judgment was communicated to the appellant A I R 1934 Lah 135 This section has no application to Income Tax Act 53 A 684=1931 A L J 593=A I R 1931 All 673 Sub section (3) has no application to application for leave to appeal to the Privy Council 152 Ind Cas 384

Exclusion of time of defendant s absence from British India and certain other territories

13 In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of the Government shall be excluded

Notes—The words "absent from British India" in this section should be construed broadly, and not limited in their application only to such persons as have been present there, or would ordinarily be present or may be expected to return 14 C 457 , see also 2 C W N 269 (F B)=25 C 496 , 26 P R 1807 , 45 B 1228 , A I R. 1933 Lah 741

Exclusion of time of proceeding *bona fide* in Court without jurisdiction

14 (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence

another civil proceeding, whether in a Court of first instance or in a Court of
hall be excluded, where such
which, from defect of juris
entertain it

Explanation I—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted

Explanation II—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III—For the purposes of this section, misjoinder of parties or of causes of action, shall be deemed to be a cause of a like nature with defect of jurisdiction

Notes—Under s 14 time can be excluded if the plaintiff has been prosecuting with due diligence another civil proceedings against the defendants where the proceeding is (1) founded upon the same cause of action, (2) prosecuted in good faith, and (3) in a Court which, *from defect of jurisdiction or other cause of a like nature,*
e also A. I R 1933 Mad 778=146 Ind
Bom 460, 1934 A L J 630=A I. R
to a defect of jurisdiction in a mistake
A I R 1934 Rang 158 *This section*
proceeding A I R 1934 Lah 412=36
in good faith and such *bona fide* mistake
of law often committed as to the proper Court in which a suit should have been

entitled under this section to deduct the *time* between the
and the time occupied
der, *i e*, from the date
Court 14 Ind Cas
case in which the plaintiff is unable after due
to appear and
4 M H C
, 19 C W N.
ed indiscrimi-
acted without
who claims
st prove two
ligence, and
entertain it from defect of
jurisdiction or other cause of a like nature 41 P R 1916=32 Ind Cas 497 This section does not apply where a special or local Act provides a special rule of limitation which must derogate from the provisions of the general rule embodied in section 14 98 Ind Cas 1050=A I R 1927 All 181 In determining which *period* is to be excluded under s 14, Court must also determine how much must be included,
any other reason A I
Time spent *bona fide* in
36 C W N 326=A I
that he acted *in good*
nce of law *is not bona*
Time spent by *bona fide*
mistake of advocate can be excluded A I R 1933 Oudh 231=10 O W N 424, see also A I R 1932 Oudh 220=9 O W N 430, 27 N L R 251

15 (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day

Exclusion of time during which proceedings are suspended

on which it was issued or made and the day on which it was withdrawn, shall be excluded

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded

Notes —Section 15 relates to injunctions which stay the institution of suits 5B 29, 11 M 103, 8 M 229, 8 C 248, 20 Ind Cas 439, 38B 153, 7 Ind Cas 886, 13 A 76 This section has however been so framed as to be applicable not only to suits but also to applications for execution of decree 7 Ind Cas 886 In order to bring into force the provisions of this section it is necessary to point out the injunction or the order staying the execution of the decree and specify the date on which it was issued or made and the date on which it was withdrawn 36 Ind Cas 939 Expressly excluded means by express words A I R 1934 Sind 240=1933 Cr C 800 Injunction or order staying execution must be express and application cannot be stayed by limitation A I R 1933 Mad 418 (F B)—56 M 490=64 M L J 664 C P Code s 48 is not controlled by s 15 (1) 132 Ind Cas 257=8 O W N 642=7 Luck 49

Execlusion of time during which proceedings to set aside execution sale are pending

16 In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree the time during which a proceeding to set aside the sale has been prosecuted shall be excluded

Notes -The period during which a sale is in controversy is excluded 25 C L J 133=21 C W N 304

Effect of death before right to sue accrues

17 (1) Where a person who would, if he were living have a right to institute a suit or make an application dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application

(2) Where a person against whom, if he were living a right to institute a suit or make an application would have accrued dies before the right accrues the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit

(3) [illegible]) applies to suits to enforce rights of pre empt [illegible] immovable property or of an hereditary office

Not[illegible] [illegible] hen a person who would if he were living [illegible] d of limitation [illegible] the deceased against the re[illegible] inistration has [illegible]

Effect of fraud.

18 Where any person having a right to institute a suit or make an application has by means of fraud been kept from the knowledge of such right or of the title on which it is founded

or where any document necessary to *establish such right has been fraudulently* concealed from him

the time limited for instituting a suit or making an application—

(*a*) against the person guilty of the fraud or accessory thereto or

(*b*) against any person claiming through him otherwise than in good faith and for a valuable consideration

shall be computed from the time when the fraud first become known to the person injuriously affected thereby, or, in the case of the concealed document when the first had the means of producing it or compelling its production

Notes—This section applies only to those cases in which fraud is committed by the party against whom a right is sought to be enforced 2 C 1 Fraud must be proved by the person who alleges it, and Courts must not be too ready to presume its existence from any suspicious circumstances 27 P L R 1903; 36 C 654=2 Ind Cas 844, 15 C W N 965, 41 Ind Cas 385, 12 P R 1898, 19 C W N

to the pre emptors

by fraud so as to

Mere silence on

the part of the vendor and vendee is no fraud 73 P R 1000 A plea of fraud raised for the first time in appeal cannot be entertained 265 P W R 1912 Where the fraud is found and the Court has to apply the Limitation Act in order to see whether the suit is within time the Court ought to have evidence of a definite character to show the point of time at which the plaintiff had not merely suspicion, but definite knowledge of fraud 14 Bom L R 771, see also 32 P R 1913, 20 Ind Cas 538 A charge of fraud must be proved with precision 5 C W. N 545, 91 P R 1893, Fraud is not to be lightly charged or lightly found specially in case of applications to set aside an execution sale 16 C W N 894 To determine the applicability of this section to the circumstances of a particular case the Court must determine whether the person aggrieved by the alleged fraud has been, as a matter of fact, kept out of knowledge of his right to have relief by reasons of the fraud 24 Ind Cas 249 Where the section applies the time ought to be computed from the time when the fraud becomes known 25 M L J 531 In order to attract the provision of this section, there must be an intentional concealment of facts by the defendant with a design to keep the plaintiff from the knowledge of his right to institute a suit 101 Ind Cas 322=A I R 1927 All 437 Fraud under s 18 may be of any person not necessarily of decree holder A I R 1933 Mad 626=56 M 734=65 M L J 139 Fraud affects limitation only when it prevents person from knowing his right or title on which it is founded A I R 1933 Rang 110=144 Ind Cas 980, see also 54 C L J 591=A I R 1932 Cal 381; 36 C W N 758=A I R 1933 Cal 253, 36 P L R 114=A I R 1934 Lah 878, 60 C L J 36, 60 C 970=37 C W N 927

19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed

Effect of acknowledgment in writing

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed, but, subject to the provisions of the Indian Evidence Act, 1872 oral evidence of its contents shall not be received

Explanation I—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set off, or is addressed to a person other than the person entitled to the property or right

Explanation II—For the purposes of this section, "signed" means signed either personally or by an agent duly authorized in this behalf

Explanation III—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right

Notes—In order to entitle a creditor to a fresh period of limitation there should be distinct acknowledgment of the date as due by the person who makes the acknowledgment 3 N W P 129 An acknowledgment to fall within this section, must be an acknowledgment of liability in respect of any portion of the amount claimed 30 C 699=7 C W N 651, 31 C 191, 43 Ind Cas 893=22 C W N 104, 13 C L J 139, A W N 1899, 222 It must be an acknowledgment of an existing liability 25 M 220 (F B), 26 M 34, 5 M L T 1, 5 C 303, 4 M H C R 385, 1 A 425, 10 M 259 An acknowledgment need not be express, it may

be left to implication 9 Bom L R 715 Such an acknowledgment must be an absolutely unconditional one 31 C 195 An acknowledgment of a conditional liability would not give a fresh start, so long as the condition remains unfulfilled 29 M 519=16 M L J 563 This section says nothing about a promise to pay the debt and requires only a definite admission of liability 10 C W N 874 P C An acknowledgment of a debt more than 3 years after the date of the debt, cannot serve to keep alive the debt simply by the fact that the right to sue on the original debt was surviving to the creditor on the date of the acknowledgment as the Courts had closed in vacation 4 Bom L R 608=26 B 782 This section applies to applications for execution of rent decrees 3 C L J 347, see also 8 C W N 470 Under this section [illegible] *ledgment of liability to the* person [illegible] through whom he claims 14 C 30 [illegible] cknowledgment by a legal practitic [illegible] Acknowledgment connotes knowledge or consciousness of the burden one assents to bear 15 C L J 251=C W N 493=13 Ind Cas 702, 104 Ind Cas 572 This section only operates against the person who makes the acknowledgment [illegible] need not be addressed to the person entitled [illegible] an insolvent entered a debt in the schedule att[illegible] amounted to an acknowledgment of debt to satisfy the provision of this section 36 Ind Cas 389 Acknowledgment must be before period of limitation 33 P L R 59=A I R 1931 Lah 691=13 Lah 240, see also 35 C W N 370 Acknowledgment does not operate as new contract but merely extends time A I R 1932 Oudh 49=8 O W N 1210 Acknowledgment by one of several mortgagees is not valid A I R 9?4 Lah 293 Conditional acknowledgment is acknowledgment after fulfilment of condition A I R 1934 Lah 973, see also 36 Bom L R 334=A I R 1934 Bom 186 A I R 1934 Lah 475 Mere signature of debtor on the back of promissory note is not acknowledgment A I R 1934 Rang 287=7 R R 163; but see A I R 1933 Lah 12=34 P L R 381 Inclusion of decree debt in insolvency petition by debtor is acknowledgment A I R 1933 Mad 565

20 (1) Where interest on a debt or legacy is, before the expiration of the prescribed period paid as such by the person liable to pay the debt or legacy, or by his agent duly authorised in this behalf or

Effect of payment of interest as such or of part payment of principal

where part of the principal of a debt is before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made

' Provided that save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the hand writing of or in a writing signed by, the person making the payment *

(2) Where mortgaged land *is in the possession for the mortgagee*, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub section (1)

Effect of receipt of produce of mortgaged land

Explanation —Debt includes money payable under a decree or order of Court

[illegible] dgment lebt 26 A 36= [illegible] 5 [illegible] 7 [illegible] al authority being proved to exist [illegible] the minors duly authorized on that [illegible] 591=A W N 1904 137=1 A L J 302 [illegible] ode or form of payment 25 C 844 P C =25 I A 95 Payment of a part of the mortgage debt by the mortgagor and appearing in his handwriting will give a fresh start of limitation to the mortgagee even as against a person who had purchased a portion of the mortgaged property prior to such

* Substituted by Act I of 1927

payment 11 C W N 107=33 C 1278 Where the plaintiff proves that he received interest through the labour of the defendants till within three years before suit, his claim is not barred by limitation 35 Ind Cas 480 'Debt' under this section includes money payable under a decree 49 A 147=25 A L J 154 The authority referred to in section 20 of the Act is an authority to make the payment 105 Ind Cas 475=A I R 1927 Mad 959 A payment made by the principal debtor to the creditor does not prevent time running in favour of surety 1934 M W N 118, 44 C 978, 28 B 248, A I R 1930 M 112, 21 M L J 455, 1911 M W N 1 Payment not endorsed in the handwriting of the person paying cannot be taken into account A I R 1934 Rang 227 see also A I R 1934 Rang 287=7 P R 163 Amendment by Act I of 1927 is made in favour of the creditor who is not able to prove writing of the debtor regarding the fact of payment as well as acknowledgment of fact of payment A I R 1933 Lah 341=34 P L R 179

21 (1) The expression "agent duly authorized in this behalf," in sections 19 and 20, shall in the case of a person under disability, include his lawful guardian, committee, or manager or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment

Agent of person under disability

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them

Acknowledgment or payment by one of several joint contractors, etc

"(3) For the purposes of the said sections—

(a) an acknowledgment signed, or a payment made, in respect of any liability, or by the duly authorized agent of any widow or other limited owner of property who is governed by the Hindu law, shall be a valid acknowledgment or payment, as the case may be against a reversioner succeeding to such liability, and

(b) where a liability has been incurred by or on behalf of a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorized agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family" *

Notes—The provision of the section is not exhaustive 32 Ind Cas 608 Valid acknowledgment can be given by a minor's natural guardian 26 M 330, 18 M 456, 30 A 422 17 M 221, 29 C 647, 19 Ind Cas 362 But acknowledgment made not by a person who is not a lawful guardian, is not binding 61 P L R 1917, 42 Ind Cas 472, 9 L B R 78 42 Ind Cas 17 An acknowledgment by a cer [illegible] dgment provided it is for the benefit of the [illegible] W N 744, 4 Bom L R 812, 29 C 647, [illegible] of the Act it is necessary to show something [illegible] nent is a partner in a going [illegible] A 418, 10 B 358 From a [illegible] omisors, a Court can infer [illegible] acknowledgments so as to [illegible] W N 782 This section is not exhaustive of the persons for whose benefit the protection was intended The words, "joint contractor" applies also to a surety 32 Ind Cas 608 [illegible] ered separately 141 Ind Cas 716=36 C [illegible] o A I R 1934 Pat 224=15 P L T 113=1 [illegible] Mother is lawful guardian within s 21 145 [illegible] R 1933 Oudh 132, see also A I R 1934 [illegible]

Clause 3 (2)—is based on 17 B 512, 37 C 401, 19 C W N 860

22 (1) Where after the institution of a suit a new plaintiff or defendant is substituted or added, the suit shall as regards him, be deemed to have been instituted when he was so made a party

Effect of substituting or adding new plaintiff or defendant

* Inserted by Act I of 1927

(2) Nothing in sub section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff

Notes—This section is also applicable when the Court of its own motion acts under s 32 of C P Code of 1882 and adds a party after the expiry of the period of limitation 35 C 519 (F B)=11 C W N 350, 10 C W N 551 28 B 11, 12 C 642, 7 C L J 257, 19 C W N 1193 This section does not govern a case where the assignees of a right of suit after the institution of such suit, obtain leave to carry on the suit, because they continue the suit not in substitution, but in conjunction with and as the representatives in interest of the original plaintiffs 5 C 720, see also 3 P R 1907, 25 C 409 21 B 580, 5 C L J 486, 23 A 331 So also in the case of partners 7 A 284 Where a suit for recovery of possession has been brought by an executor, and the names of the beneficiaries who have taken possession of the estate during the pendency of the suit are subsequently substituted as plaintiffs, no new plaintiffs are substituted within the meaning of the section and such substitution does not make a new suit 7 C W N 817 This section is not intended to apply to a case in which the ground on which the original defendant is sought to be made liable, is merely shifted, without new persons being included as defendants 15 M 417=2 M L J 119 Where a person who was at the institution of a suit made a *pro forma* defendant is subsequently joined as a plaintiff, this section does not apply 8 C L J 286=13 C W N 186=35 C 1065=5 M L T 91 Section 22 refers only to parties subsequently added 135 Ind Cas 423=33 Bom L R 1385=A I R 1931 Bom 550 S 22 applies to suits and Art 165 to application 58 C 55=A I R 1931 Cal 385=132 Ind Cas 631 Transfer of name of one party from one side to other is not fresh application to create bar of limitation 1931 A L J 863=A I R 1931 A L J 725, see also 11 O W N 1071=A I R 1934 Oudh 462, 13 P L T 392=A I R 1932 Pat 304, 11 Pat 616=A I R 1932 Pat 346, A I R 1933 Pat 239=14 P L T 252 Where necessary parties are not joined within time suit must be dismissed 137 Ind Cas 274=A I R 1932 Mad 583=62 M L J 154, see also 15 P L T 596 But this section is not applicable where the suit is against manager of joint family and other members are subsequently added 58 B 348

23 In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues

Continuing breaches and wrongs

Notes—The refusal of a wife to return to her husband and allow him the exercise of conjugal rights constitutes a continuing wrong giving rise to constantly concurrent causes of action on demand and refusal 16 B 715 Note In a suit for compensation governed by art 39 of the Limitation Act, s 23 of the Act would be appl... ...ed b the tort complained of would be nil or a ... oluntarily caused or ... n is not among the ... aw unless expressly ... inuous wrong and a ... g which the wrong ... s a nuisance and no ... way Such encroachment is a continuing wrong and s 23 Limitation Act applies to it and there is no limitation for removing the obstruction or encroachment A I R 1934 Pat 34, A I R 1927 P 265 The action of the *Swetambaris* in placing charms with the nails in three of the shrines is a wrong of which the *Digambaries* are entitled to complain and is a continuing wrong as to which under s 23 a fresh period begins to run at every moment of the day on which the wrong continues A I R 1933 P C 193=37 C W N 1021=12 Pat 681 Where order is passed under s 145 Cr P Code right to sue arises from moment to moment 12 Pat 761=A I R 1933 Pat 224

24 In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage

Illustration

A owns the surface of a field B owns the subsoil B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides The period of limitation in the case of a suit by A against B runs from the time of the subsidence

Notes —*Vide* 28 M 72

Computation of time mentioned in instruments

25 All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Illustrations.

(*a*) A Hindu makes a promissory note bearing a Native date only, and payable four months after date The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar

(*b*) A Hindu makes a bond bearing a Native date only, for the repayment of money within one year The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar

Notes —The law of limitation being a law of procedure, in order to see by what computation the time must be reckoned we must look to the English calendar 4 B L R App 53 Under this section all instruments are for the purposes of the Act to be deemed to be made with reference to the Gregorian, *i e*, the English Calendar 11 C P L R 91, see also 6 C 239=6 C L R 553, 4 B 103, 6 B 83, 17 M 61, 105 Ind Cas 241=A I R 1927 Mad 917, 8 O W N 834

PART IV.

Acquisition of Ownership by possession

Acquisition of right to easements

26 (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right without interruption, and for twenty years, and

where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water or other easement shall be absolute and indefeasible

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to

under sub section (1)
as if for the words

the meaning of this section, unless, where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made

Illustrations

a right of way The defendant
The plaintiff proves that the
aiming title thereto as an ease
January, 1890 to 1st January 1910

(*b*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right The suit shall be dismissed

Notes —The proper issues to be framed under this section of the Limitation Act where limitation is pleaded in bar of a suit to establish an easement stated 6 C 812 A right of way or other easement is not acquired under s 26 of the Act necessarily with the knowledge of the servient owner 10 C 214 The Act does not exclude modes of acquiring [illegible]
151 , 15 B L R 36 [illegible]
appertures in the w [illegible]
meaning of s 27, so as to create an easement only when such enjoyment is open and man fest not furtive or invisible, and when it is not in suchwise as to involve the admission of a constructive right in the owner of the alleged servient tenement 7 B 522 A plaintiff who seeks to enforce right to discharge surplus water of the existence of an easement is required to prove the acquisition of the easement under this section 35 Ind Cas [illegible] ough another person s property [illegible] oo Ind Cas 408=A I R 1927 [illegible] t is enough for the plaintiff to [illegible] interruption, without express or implied permission of the owner of the dominant tenement and without secrecy or stealth 41 C L J 379=87 Ind Cas 19 This section is not exhaustive 90 Ind Cas 350 The term as of right' signifies enjoyment by person in assertion of right A I R 1931 Lah 395=33 P L R 139=12 Lah 741 , see also 59 C 260=35 C W N 963 Right to fish is a profit *a pendre* and can be acquired by 20 years' uninterrupted enjoyment 148 Ind Cas 431=A I R 1934 Pat 420 But exclusive right of fishery is interest in immovable property and can be acquired by adverse possession of more than 12 years involving ouster of rightful owner 59 C 344=35 C W N 1256=A I R 1932 Cal 300 Fishing right through hired men can not be acquired by prescription 37 C W N 18=A I R 1933 Cal 539 'Peaceable' signifies negation of physical force 33 P L R 139=12 Lah 741 Interruption must result in actual discontinuance of enjoyment of right 33 P L R 139=12 Lah 741 , see also A I R 1933 Rang 351

Exclusion in favour of reversioner of servient tenement

27. Where any land or water upon, over, or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water

Illustration

A sues for a declarat on that he is entitled to a right of way over B s land A proves that he has enjoyed the right for twenty five years , but B shows that during ten of these years C a Hindu w dow, had a life interest in the land ; that on C s death B became entitled to the land and that within two years after C s death he contested A s claim to the right The suit must be d sm ssed as A with reference to the provisions of this section has only proved enjoyment for fifteen years

Notes —*Vide* 41 Ind Cas 47

Extinguishment of right to property

28 At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished

[illegible]

possession and who need not sue for recovery of possession 12 M 255 A decree having been once dead no application out of time however *bona fide*, could revive it 4 C 708 Under this section the right of a person to property is extinguished at the determination of the period limited for beginning a suit for possession of it The point whether defendant has acquired a title by prescription is one that need not be pleaded expressly, because adverse possession of more than twelve years is only evidence of title 24 M 387=5 C W N 545=28 I A 81=3 Bom L R 303 P C This section only extinguishes a righ if the remedy by suit is barred It does not say that even a defence will be barred 89 Ind Cas 751 The cause of action for maintenance accrues from time to time according to the want and exigencies of the person entitled and this section of the Act does not operate to extinguish it 73 Ind Cas 235 A right of property which is vested in one person is not transferred by the mere lapse of time to the person actually in possession 45 A 419=21 A L J 257=74 Ind Cas 476=50 I A 202 Law of limitation only bars remedies and does not extinguish rights 32 P L R 479=A I R 1931 Lah 668 54 A 299=1931 A L J 1018=A I R 1931 All 635 (F B)

PART V

SAVINGS AND REPEALS

Savings ***29** (1) "Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 †

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(*a*) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law, and

(*b*) the remaining provisions of this Act shall not apply '

(3) Nothing in this Act shall apply to suits under the Indian Divorce Act

(4) Sections 26 and 27 and the definition of easement', in section 2 shall not app'y to cases arising in territories to which the Indian Easements Act, 1882, may for the time being, extend

Notes —The amendment of this section by Act X of 192 does not restrict the scope of the section but extends it Under the old section, none of the provisions of [illegible] l or local Acts unless they were expressly inclu [illegible] section some of them are applicable without [illegible] are expressly excluded, the rest remain as [illegible] are expressly included A I R 1926 Nag 236 Section 29 of the Act does not include the Code of Civil Procedure in its scope as it is not a special law 11 O W N 1103=A I R 1934 Oudh 465 Rules of High Court are not special laws A I R 1934 Pat 353=15 P L T 301 English statute is not local or special laws 25 S L R 222=A I R 1931 Sind 124 Section 29 does not cut down whatever is provided by special or local law either by express words or clear intention 36 C W N 833, see also A I R 1933 Sind 240

30 *Repealed by Act VIII of 1930*

31 *Repealed by Act VIII of 1930*

32 *Repealed by Act XVII of 1914*

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* Section 29 sub sections (1) and (2) have been substituted by Act X of 1922
† Act IX of 1872

THE FIRST SCHEDULE.

(*See section* 3)

FIRST DIVISION SUITS

Description of suits	Period of limitation	Time from which period begins to run
	Part I — Thirt ydays	
1 To contest an award of the Board of Revenue under the Waste Lands (Claims) Act, 1863	Thirty days	When notice of the award is delivered to the plaintiff
	Part II — Ninety days	
2 For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India	Ninety days	When the act or omission takes place

Notes —A defendant pleading this article in bar of a suit cannot merely allege that he honestly believed that the Act, in pursuance of which, the alleged act was committed, was in force, but must also show that the Act was actually operative at the time and place of acts complained of 105 P R 1886 The intention must be honest on the part of the public officer 15 C 259; 36 A 555; 1934 Lah 169, 2 Ind Cas 819, P R 124 of 1881, A I R 1932 All 16

Description of suits	Period of limitation	Time from which period begins to run
	Part III Six months	
3 —Under the Specific Relief Act 1877* section 9, to recover possession of immovable property	"Six month"	When the dispossession occurs

Notes —*Vide* 13 Ind Cas 541

Description of suits	Period of limitation	Time from which period begins to run
4 —Under the Employers and Workmen (Disputes) Act 1860, † section 1	"Six months"‡	When the wages, hire, or price of work claimed accrue or accrues due
	Part IV‖ *One year*‖	
5 —Under the summary procedure referred to in section 128 (2) (*f*) of the Code of Civil Procedure 1908,§ "where the provisions of such summary procedure does not exclude the ordinary procedure in such suits and under order XXXVII of the said Code"	One year¶	When the debt or liquidated demand becomes payable or when the property becomes recoverable.

Notes —This Article does not apply to suits on promissory notes filed under Order 37, C P Code 52 C 954=41 C L J 368=29 C W N 859

Description of suits	Period of limitation	Time from which period begins to run
6 —Upon a Statute, Act, Regulation or Bye law, for a penalty or forfeiture	One year	When the penalty or forfeiture is incurred

* Act I of 1877 † Act XI of 1860

‡ The words within quotations have been substituted by Act 11 of 1923.

‖ Inserted by Act 30 of 1925

§ Act V of 1908

Notes —*Vide* 31 M 54

	Part IV—*Contd*	
7 For the wages of a house hold servant, artisan or labourer not provided for by this schedule, article 4	'One year *	When the wages accrue due

Notes —A wet nurse is not a house hold servant and a suit by her for recovery of her wages is governed by art 102, Limitation Act, 10 A L J 395 As to who are house hold servants *vide* 28 Ind Cas 956, 8 M 87, 7 M 99 10 W R 260, 13 W R 150, 6 W R 18, 26 O C 327, 90 Ind Cas 120, 50 Ind Cas 37, 8 Luck 119=A I R 1933 Oudh 393, A I R 1934 Nag 260

8 For the price of food or drink sold by the keeper of a hotel, tavern, or lodging house	'One year' *	When the food or drink is delivered
9 For the price of lodging .	"One year *	When the price becomes payable
10 To enforce a right of pre emp t on whether the right is founded on law, or general usage, or on special contract	'One year *	When the purchaser takes, under the sale sought to be impeached physical posses sion of the whole of the property sold, or, where the subject of the sale does not admit of physical posses sion, when the instrument of sale is registered

Notes —A suit claiming possession by virtue of a right to pre emption is a suit to enforce a right of pre emption The suit is governed by art 10 2 A L J 151 In a suit for pre emption if the entire subject of the sale is not capable of physical possession, limitation must be computed from the date on which the sale deed was registered 156 P R 1882 The term 'physical possession means 'personal and immediate possession 24 A 17 P C=5 C W N 888=28 I A 248=3 Bom L R 707, 20 A 375 20 A 358 7 O C 8, see also 28 A 424 88 P R 1905, 49 P R 1908 Where sale is disguised as mortgage time runs from the time when fraud becomes known 36 P L R 114=A I R 1934 Lah 878

11 By a person against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order (1) Order under the Code of Civil Procedure 1908 on a claim prefer red to or an objection made to the attachment of, property attached in execution of a decree, (2) Order under section 28 of the Presidency Small Causes Courts Act, 1882	One year"*	The date of the order

Notes —Where, after investigation under s 280 of the Code, the release of certain property which was attached in execution of a decree, was ordered as against the decree holder, he is by Art 11 limited to one year, within which to sue for es [illegible] is judgment debtor 15 C 521=15 I A 123 [illegible] secure prompt and speedy determination as [illegible] 1 C L J 296 A party, who has unsuccess [illegible] execution, does not lose his rights to them [illegible] 63 Civil Pro Code sue for them irrespective of whatever might

* The words within quotations have been substituted by Act 11 of 1923

have taken place in execution proceedings subject of course, to the period of limitation of one year from the date of the adverse order 7 C 608=9 C L R 8 Where ... nd of unnecessary delay still suit must be brought ... 57 B 213=A I R 1933 Bom 190, see also A I R 1932 Lah 516, 6 Luck 461=7 O W N ... A I R 1931 Rang 183=131 Ind Cas 727, 150 Ind Cas 40 But this article is not applicable where claim is allowed nor in the case of attachment before judgment 34 P L R 443=A I R 1933 Lah 449, 33 P L R 882=139 Ind Cas 522=A I R 1932 Lah 460, A I R 1934 Pat 580 Limitation does not run from order passed in revision 130 Ind Cas 145=27 N L R 251=A I R 1931 Nag 17

11A By a person against whom an order has been made under the Code of Civil Procedure 1908, upon an application by the holder *of a decree for* the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, *or upon an* application by any person dispossessed of such property in the delivery of possession thereof *to the decree holder or* purchaser, to establish the right which he claims to the present possession of the property comprised in the order	'One year *	The date of the order

Notes—The order contemplated by s 281 of the Civil Procedure Code is an order made after the investigation into the facts of the case mentioned in s 278, so that the period of one year's limitation to a subsequent suit under s 283 would not apply where there has been no such investigation 12 C 108 Arts 11 and 11A refer o ... ontemplated by s 283 of the Code 12 C 453 Where a claim to a t ... was not in p ... by the one ... investigation ... 21, rule 97 of the C P Code does not apply 36 C W N 905 ... Cal 246 Where in case of sale under mortgage decree, objection is disallowed, suit need not be brought within one year 33 P L R 1033=A I R 1933 Lah 75=141 Ind Cas 252

12 To set aside any of the following sales — (*a*) sale in execution of a decree of a Civil Court, (*b*) sale in pursuance of a decree or order of a Collector or other officer of revenue, (*c*) sale for arrears of Government revenue, or for any demand recoverable as such arrears, (*d*) sale of a patni taluq sold for current arrears of rent *Explanation*—In this article 'patni' includes any intermediate tenure saleable for current arrears of rent	*One year* *	When the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought

* The words within quotations have been substituted by Act 11 of 1923

Notes—This art does not apply to suits in which the plaintiff is not a party to and not bound by the sale it is sought to set aside 5 M 54 Where immovable property is sold in execution of a decree which is subsequently set aside in appeal a suit by the successful party to set aside such sale and for possession of the property is governed by art 12 5 A 573=A W N 1883 158 A suit to set aside a sale held under the erroneous order referred to above would be governed by art 12 cl (a) of the Limitation Act 11 C 287 Where the Board of Revenue first discharged and subsequently confirmed an order of the Commissioner confirming a sale by the Collector, the period of limitation should be computed from the date of the subsequent order of confirmation by the Board 23 C 775 P C =23 I A 45 Where in execution of a mortgage decree the prior mortgagee purchased the property, a suit to set aside the sale (if invalid) was governed by art 12 12 M L J 390 Where the suit is to set aside a sale of property not belonging to the judgment debtor but *to a stranger who has no notice of it such stranger may treat it as a nullity* and sue to recover the property at any time within 12 years from the date of his losing possession 26 A 346=1 A L J 53 This article does not apply where person not party to sale is not sueing to set aside sale but only contending that his rights are not affected by the sale *A I R 1933 Lah 10=34 P L R 468. Suit to set* aside sale in execution of decree on ground of fraud is governed by Art 95 and not by Art 12 14 P L T 441=A I R 1933 Pat 473 Art 12 (b) is inapplicable to sales under Madras Estate Land Act 1908 61 M L J 203=A I R 1931 Mad 724

13 To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit	"One year*	The date of the final decision or order in the case by a Court competent to determine it finally

Notes—This section does not apply where the order simply amounts to a declaration that the Court considers it has no jurisdiction to act as desired, the general law of limitation for suits to establish a right would apply 6 C 142=7 C L R 396 Art 13 does not apply to a suit by a puisne mortgagee, to recover the sum due to him under his m[illegible] mortgaged property to sale [illegible] charge of the debt due to hi[illegible] of that debt as against puisn[illegible] chasers at an auction sale wh[illegible] ssion of the property so purch[illegible] A W N 1894, 78 This article does not apply to a suit for declaration of title based on a deed already held to be invalid. 60 Ind Cas 840 Subsequent suit to declare title to property declared to be sold is not governed by Art 13 143 Ind Cas 475=36 C W N 621=A I R 1933 Cal 263

14 To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for	"One year"*	The date of the act or order

Notes—This article is inapplicable to a case in which the order to an absolute nullity 21 C 626 15 B 424 11 B 429, 39 B 494, 14 C L J 151. Where an order is entirely *ultra vires of* an Executive Government, it is a mere nullity and no suit is necessary to set it aside 7 Bom L R 497=29 B 480, 13 Ind Cas 517=14 Bom L R 517, 30 M 280, 32 C 716, 39 B 494, 32 C 1107, 17 C W N 55 The order rejecting the objection under s 103 A, Bengal Tenancy Act, having no finality is not an [illegible] N 48 [illegible] s 109 B [illegible] Act, 1873 is governed by this article 25 P R 1893 For other cases on this article, *vide* 57 M 501=66 M L J 715, 36 Bom L R 761, 66 M L J 914 (P C), 15 Lah 389=36 P L R 337 (F B)

* The words within quotations have been substituted by Act 11 of 1923

15 Against Government to set aside any attachment, lease, or transfer of immovable property by the revenue authorities for arears of Government revenue	"One year"*	When the attachment, lease, or transfer is made

Notes —*Vide* 23 C 405, 14 W R 203, 2 N W. P 52

16 Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears	"One year"*	When the payment is made

Notes —A suit for the recovery of water cess illegally collected without any proceeding under the Revenue Recovery Act is governed by this article M W N 1913 75, see also 12 L W 334, 46 M 488

17 Against Government for compensation for land acquired for public purposes	One year *	The date of determining of the amount of the compensation
18 Like suit for compensation when the acquisition is not completed	"One year *	The date of the refusal to complete

Notes —This section applies to suits for compensation for noncompletion and refusal to complete an acquisition 11 C W N 356=5 C L J 669=34 C 473, 27 M 635.

19 For compensation for false imprisonment	"One year *	When the imprisonment ends

[illegible] cannot be regarded as under imprison
=30 I A 154=7 C W N 729 P C In
ment, the period of limitation has to be
igistrate ordered for remand 17 C P
L R 41

20 By executors, administrators or representatives under the Legal Representatives' Suits Act 1855 †	'One year *	The date of the death of the person wronged
21 By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855 ‡	'One year'*	The date of the death of the person killed

Notes —*Vide* 28 M 479

22 For compensation for any other injury to the person	'One year'*	When the injury in committed

Notes —*Vide* 5 Ind Cas 124, 24 Bom L R 333, 89 Ind Cas 796, A I R 1932 Mad 432, 58 B 128, 58 B 536

23 For compensation for a malicious prosecution	"One year *	When the plaintiff is acquitted, or the prosecution *is otherwise terminated*

Notes —The time begins to run from the date of the plaintiff's acquittal 22 M, 24, 9 M L J 133, 17 M L J 60, 57 Ind Cas 635, 24 Bom L R 507

24 For compensation for libel	"One year"*	When the libel is published

Notes —A suit for damages for preferring a false report to the police of defamatory character is governed either by art 24 or 25 and not by art 23 24 A 368, see also 18 C L J 352

25 For compensation for slander	'One year *	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results

* The words within quotations have been substituted by Act 11 of 1923
† Act XII of 1855 ‡ Act XIII of 1855.

Notes—*Vid* 28 C 452=5 C W N 659

26 For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter	"One year"*	When the loss occurs
27 For compensation for inducing a person to break a contract with the plaintiff	"One year"*	The date of the breach
28 For compensation for an illegal, irregular, or excessive distress	"One Year"*	The date of the distress

Notes—*Vide* 28 A 482

29 For compensation for wrongful seizure of movable property under legal process	"One year"*	The date of the seizure

Notes—A suit to recover the value of movable property wrongfully seized and sold in execu ... ngful seizure of property under legal ... therefor is contained in this ar icle ... ongful seizure, the seizure ... ocess and that by reason of such wrongful sei- ... 30 C 440=7 C W N 520, 13 Ind Cas 182, ... N 728, 24 A 146, 49 P R 1881; see also 27 M 340, 27 A 615, 31 M L J 257, 18 M L J 590 (F B), 31 M 431, 4 N L R 49, 12 Ind Cas 405, 3 O C 340, 14 Ind Cas 182, 65 Ind Cas 665, 13 N L J 209 As regards the meaning of the expression "seizure" *vide* 15 A L J 295, 42 C 85 38 M 912, 38 A 676, 26 M L J 166 This section applies to cases where the foundation of the claim is that the defendant procured the seizure of the plaintiff's property under a perfectly legal process but by misrepresentation to the Court 55 Ind Cas 786 Where plaintiff's claim is for recovery of the amount of money he has voluntarily paid to the official liquidator to save his property which had been wrongfully attached by the latter art 62 and not article 29 applied A I R 1934 Oudh 158=11 O W N 398=148 Ind Cas 448 The starting point of limitation is the date of seizure A I R 1934 Rang 329

30 Against a carrier for compensation for losing or injuring goods	"One year"*	When the loss or injury occurs

Notes—A suit against a ... and independently of contract ... 3 M 107, 20 C W N 502, 1c ... of loss 7 B 478, see also 17c ... when the goods entrusted to a Railway Company, were lost is on the Railway Company 23 M L J 511, 45 A 43

31 Against a carrier for compensation for non delivery of, or delay in delivering, goods	"One year"*	When the goods ought to be delivered

Notes— ... for ... Cas ... 191 ... of g ... the goods and the suit was brought within one year from the date of refusal to deliver the same neither article 30 nor article 31 barred the suit 23 M L J 511 Where the suit is regarded as one for compensation for failure to deliver the planks in breach of the contract under the bill of lading, this article is applicable 29 M L J 743 ... y this article ... livery ought to ... I R 1933 Pat ... carrier within ... Art 31 applies ... 34 Consignee ... as 703=1933 A L J 796=A I R 1933 All 466

* The words within quotations have been substituted by Act 11 of 1923

	Part V— Two years	
32 Against one who having a right to use property for specific purposes, perverts it to other purposes	Two years' *	When the perversion first becomes known to the person injured thereby

Notes—Where the defendant had the right to bury their dead in a public grave yard planted trees thereon and converted into a grove a suit for removal of the trees falls within this article 93 Ind Cas 89 The words having a right to use the property' refer, not to the time when the suit is brought, but to the time when the property" was perverted to other purposes A W N 1894, 165 The 'right to use does not embrace a mere licence to use A. I R 1934 All 836

33 Under the Legal Representatives' Suits Act, 1855 against an executor	'Two years *	When the wrong complained of is done
34 Under the same Act against an administrator	Two years *	Ditto
35 Under the same Act against any other representative	"Two years *	Ditto
36 For compensation for any malfeasance misfeasance or nonfeasance independent of contract, and not here in specially provided for	'Two years *	When the malfeasance misfeasance or nonfeasance takes place

Notes—The period of limitation for a suit for compensation for damage caused to plaintiffs building by reason of the defendant clos ng up certain drains is 2 years under this Act as it is an act of malfeasance 92 Ind Cas 994=A I R 1926 Lah 242 A suit for damages for the wrongful cutting and misappropriating the crops does not fall under art 36 22 C 877, 25 C 692 (F B)=2 C W N 265 Where a defendant sets up a statutory bar under art 36 the burden of showing that the suit comes clearly under this article rests on him 25 C 69=2 C W N 265(F B) Where it was found that the defendants had set up a fictitious landlord and a fictitious tenant [illegible] ined a process for d straint from C [illegible] d strained and subsequently cut [illegible] ject of the above acts of the defend [illegible] 9 C L J 109=36 C 141 This article does not govern suit for injury to property while in plaintiffs possession 11 B [illegible] respect [illegible] it is bro [illegible] suit for [illegible] Cas 796=A I R 1924 Bom 290 Art 36 is general article for suits for compensations for all acts and ommissions amount ng to torts not provided for elsewhere 136 Ind Cas 809=54 A 467=1932 A L J 741= A I R 1932 All 256, see also A I R 1933 Sind 176 A I R 1933 Sind 103

	Part VI— Three years	
37 For compensation for obstructing a way or water course	'Three years †	The date of the obstruction
38 For compensation for diverting a water course	Three years †	The date of the divertion
39 For compensation for trespass upon immovable property	'Three years †	The date of the trespass

Notes—A trespass upon immovable property continues to be such until the possession of the trespasser comes to an end the limitation for suits for compensation in such cases is three years 6 M 176 Each act of trespass caused a fresh cause of action 24 W R 97, 7 B 323 A suit for the recovery of the value of standing crops wrongfully cut and carried away falls under this article 18 M L T 53?

* The words within quotations have been substituted by Act 11 of 19?3
* Substituted by Act 11 of 19?3

Part VI—

Three years (contd)

40 For compensation for infringing copyright or any other exclusive privilege	"Three years"*	The date of the infringement

Notes —In a suit for an account of profits obtained by the infringement of an exclusive privilege, the period of limitation is the same as that for an action for damages on the same ground 3 C 17 The right to a trade name or trade mark is an exclusive privilege and a suit for damages for infringing the privilege is governed by this article 42 P R 1919=51 Ind Cas 434 Date of infringement is date of sale of every book A I R 1934 All 927

41 To restrain waste	'Three years"*	When the waste begins
42 For compensation for injury caused by an injunction wrongfully obtained	'Three years *	When the injunction ceases

Notes —This article does not show that a suit is maintainable for damages for an injury caused by an injunction wrongfully obtained because such an act cannot create a cause of action if it does not exist independently 30 C W N 465

43 Under the 'Indian Succession Act 1925 section 360 or section 361"† to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets	Three years *	The date of the payment or distribution
44 By a ward who has attained majority, to set aside a transfer of property by his guardian	'Three years *	When the ward attains majority

Notes —In the case of an alienation by a [illegible] by a son within 3 years of his attaining maj[illegible] elder brother attained majority more than 3 ye[illegible] the sale 1926 Mad 1120 This article applies only to cases in which the plaintiff seeks to set aside a genuine transaction It is *not limited in its application only* to cases of alienation by statutory guardians of the property of their wards, it is applicable to an alienation by a guardian *defacto* as well as that by a guardian *defacto* and *de jure* 13 C L J 277, 58 P R 1891 but see 125 P R 1893, 180 P L R 1912, 28 P R 1909, 24 Ind Cas 110 but see 17 Bom L R 1134 This article [illegible] s no right whatever to sell the proper[illegible] 44 does not apply to suit by minor [illegible] Art 44 applies in case of *de jure* guard[illegible] 597=33 M L W 664, see also 53 A [illegible], 40 L W 760, 57 M 1062=40 L [illegible] 1934 Mad 605=67 M L J 322, A I R 1934 Lah 601=35 P. L R 722, 54 A 93=36 C W N 310 (P C) Minor alone can sue A I R 1933 Bom 42, 36 Bom L R 474

45 To contest an award under any of the following Regulations of the Bengal Code— The Bengal Land revenue (Settlement) Regulation, 1822 The Bengal Land revenue (Settlement) Regulation 1825 The Bengal Land revenue (Settlement and Deputy Collectors) Regulation 1833	'Three years' *	The date of the final award or order in the case

Notes —The 'award" contemplated by this article pre supposes a contest between the parties and a decision after proper investigation into the points at issue 104 Ind Cas 655

† Substituted by Act VIII of 1930 * Substituted by Act 11 of 1923

46 By a party bound by such award to recover any property comprised therein	'Three years'*	The date of the final award or order in the case

Notes —A suit instituted af- ... more than three years had elapsed from the date of the order under s 41 under this article 34 C L J. 46 by the parties to arbitration, under s 526 of the Civil Procedure Code of 1882, but the ... execution thereof, *held* that the plaintiff's suit for possession of the lands awarded to him was barred after the lapse of 3 years from the date of the award. 27 Bom L R. 166=29 C W. N 633=48 M L J 20 (P C)

47 By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure, 1898, or the Mamlatdars' Courts Act, 1906,† or by any one claiming under such person to recover the property comprised in such order	'Three-years"*	The date of the final order in the case

Notes —The section has no application where the order of the Magistrate in a proceeding under s 145 of Cr Pro Code did not dispossess the possession of the parties. 30 C W. N 873 This section is not applicable to a suit brought by a plaintiff in whose favour an order under section 145 of the Criminal Procedure Code is passed 99 Ind Cas 532=A I R 1927 Mad 304, see also 12 Pat 261=A I R 1933 Pat 224, 11 O W N 1165 This article is no bar to a suit by a person not ... 23 M L J 348 The three years' ... to a case where an attachment procee ... harge of the Sub Magistrate because the previous possessor is unascertained ... 309 Whether this article will apply to a case where an order is passed under s 146 Cr Pro Code, attaching the property is an open question 28 C 86=5 C W N 160 Suit denying right of way affirmed by *Mamlatdar* is governed by Art 47 135 Ind Cas 427=33 Bom L R 517=A I R 1931 Bom. 256 When time has begun to run, subsequent attachment does not give fresh start A I R 1933 Pat 224=14 Pat 261=14 P L. T 113 The principle underlying this article is that as possession is outstanding, the party who is out of it should sue within three years to recover it 56 Ind Cas 675 This article is not confined in its operation to orders passed under Chap XII of the Criminal Pro Code 86 Ind Cas 744

48 For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same	"Three years'*	When the person having the right to the possession of the property first learns in whose possession it is

Notes —The word 'conversion" under this article means dishonest conversion 31 C W N 82 A suit for the recovery of money given for a particular purpose which is not applied to such purpose is governed by art 48 and time begins to run when the plaintiff becomes aware that the money was not so applied 5A 341 A suit against an innocent person to recover stolen property or its value as damages is governed by this article 229 P L R 1911=11 Ind Cas 446 This article deals with specific movable property which falls under one of two clauses, namely, (1) such property as has been lost and (2) such property as has been acquired (a) by theft (b) b ... or (c) by conversion No other kind of immovable ... 12 Bom L R 513=7 Ind Cas 447 A suit to ... t to be delivered to a third person falls under this sec ... 671 The mere non payment of rent does not amount to a wrongful taking or wrongful detention within the meaning of this article 13 A L J 81=27 Ind Cas 637 A suit to recover the price of materials of a house removed and misappropriated by the defendants must be brought

* Substituted by Act 11 of 1923

† Bom 11 of 1906

within the period prescribed by this article 52 Ind Cas 369 Arts 48 and 49 apply to suits for recovery of specific movable property or for compensation for the same Art 48 is more special and Art 49 is more general 54 A 467=1932 All L J 241=A I R 1932 All 256, see also A I R 1934 Pat 507

48A* To recover movable pro [illegible]	"Three years"†	When the sale becomes known to the plaintiff
[illegible] able property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment made by a manager thereof for a valuable consideration	"Three years"†	When the sale becomes known to the plaintiff

Clause (a)—After Article 48, two new articles, namely, 48A and 48B have been inserted stating the period of limitation for recovering movable property conveyed or bequeathed in trust and to set aside sale of movable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment made by a manager thereof for a valuable consideration Section 48 A corresponds to old section 133, *only the period of 12 years have been curtailed to three years* Article 133 has been omitted as its provisions have been enacted in article 48A

49 For other specific movable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same	"Three years"†	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful

Notes—A suit for damages against oc [illegible] in his holding is governed by this art [illegible] one framed for recovery of specific movabl [illegible] *and where the claim for compensation is* [illegible] not take it out of the scope of that article 22 M 478 A suit to recover the title deeds deposited with the mortgagee, after the mortgage has been redeemed is governed by this article, and time begins to run from the date of refusal of a demand to return the documents 15 M 157 This article is inapplicable when the plaintiff has not strictly speaking a personal claim to movable property 17 C 3=16 I A 137 P C When under the erroneous order of a Magistrate the defendant took possession of the paddy for his own purposes he was guilty of a conversion which gave to the [illegible] for 3 years from [illegible] T 397=16 M [illegible] s sought to be [illegible] =A I R 1933 [illegible] t for the plaintiff [illegible] by the plaintiff [illegible] tes or their value

50 For the hire of animals, vehicles, boats or household furniture	"Three years"†	When the hire becomes payable
51 For the balance of money advanced in payment of goods to be delivered	"Three years"†	When the goods ought to be delivered
52 For the price of goods sold and delivered, where no fixed period of credit is agreed upon	"Three years"†	The date of the delivery of goods

Notes—A suit to recover arrears of subscription to a newspaper *is governed* by [illegible]

* Inserted by Act I of 1929 † Substituted by Act II of 1923

805 Liability to pay full price accrues on date of sale and limitation runs from the date. 1931 A L J 363=A I R 1931 All 229

53 For the price of goods sold and delivered to be paid for after the [illegible]	'Three years'*	When the period of credit expires
[illegible]	Three years '*	When the period of the proposed bill elapses
[illegible]	'Three years '*	The debt of the sale
[illegible] his request, where no time has been fixed for payment	'Three years *	When the work is done
57 For money payable for money lent	'Three years *	When the loan is made

Notes—A suit by a pawnee to recover the balance due on his debt after accounting for the proceeds of the sale of the articles pledged is governed by this article 24 A 251, 7 Bom L R 739=30 B 218 It does not follow that when relief against a debtor personally is barred, remedy against property given as security for the debt is also barred 1 L B R 154 Where the plaint prays for sale of the property pledged and also for a personal remedy against the defendant, the suit will, so far as the former remedy is concerned, be governed by art 120 and by art 57 as regards the latter remedy 116 P R 1881, 22 C 21 17 A 284, 27 M 528 (F B) This article applies to suit for money deposited on current account 57 Ind Cas 908, see also 12 Lah 420, A I R 1934 All 126

58 Like suit when the lender has given a cheque for the money	'Three years *	When the cheque is paid

Notes—The mere transfer of *hundis* for the purpose of making a loan of their value when realised does not amount to a loan until money has been realized by the transferee 2 A L J 579=23 A 54

59 For money lent under an agreement that it shall be payable on demand	Three years *	When the loan is made

Notes—A promissory note payable on demand is a present debt and is due and payable at once without demand 25 C L J 138, 58 C 290=34 C W N 779 This article deals with the case of money lent under an agreement that it would be payable on demand 13 A L J 402=37 A 292=28 Ind Cas 449 If "on demand" is integral part of agreement demand is necessary A I R 1933 Rang 188=11 Rang 328 A suit to recover sum of money alleged to have been deposited is governed by Art 60 and not by Art 59 140 Ind Cas 96=1932 A L J 261

60 For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable	'Three years'	When the demand is made

Notes—The term 'deposit' must be construed in its ordinary or popular sense 15 C P L R 147, 30 M 1081, 49 Ind Cas 573 32 Ind Cas 965 The word 'deposit' as distinct from a loan points to cases where money is lodged with another under an express trust or under circumstances from which a trust may be implied 6 C L R 470 16 C 25 If a defendant holds, as trustee, money sent by plaintiff in deposit the case will fall under this article 28 C 393 In the case of deposit, limitation commences from the date of demand 19 B 352 The money deposited with banker repayable on demand is a deposit 16 C 25, 37 A 297 Art 60 does not apply to a suit for recovery of money deposited under agreement that it shall be payable at specified time 1930 A L J 1157=A I R 1931 All 59 Demand must be unqualified one and for whole sum due to start limitation 63

* Substituted by Act II of 1923

M L J 232=A I R 1932 Mad 685, see also A I R 1933 Pat 701, 15 Lah 242=A I R 1934 Lah 42, 35 P L R 91 In a transaction between customer and banker this article applies A I R 1934 Lah 42=15 Lah. 242

61 For money payable to the plaintiff for money paid for the defendant	"Three years" *	When the money is paid

Notes—In a suit to recover a balance with reference to payments made by plaintiff on account of defendants where no mutual account or reciprocal demand exists, the plaintiff could not recover any item due more than three years 24 W R 390, see also 5 C 321 So also any other suit to recover money paid for defendant's ... ned by this article 9 A 244 see also ... 271, 7 A L J 588=6 Ind Cas 878, ... W N 402 (P C), 6 C W N 903, ... 140 P R 1909

62 For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use	"Three years" *	When the money is received

Notes—This article is intended to cover cases to which the English form of common law action for money had and received applied 2 C 393 Where the consideration for the purchase money paid has wholly failed it is recoverable as money received for the use of ... article 15 C 51 ... of a part of a *Shet* ... was held ... 665 A suit for the recovery of purchase ... L T 467=8 Ind Cas 1087, see also 30 M ... a suit by the mortgagor to recover the ... N 1881, 41 This article is applicable to a ... to recover specific sums received during ... 1003 A *benamidar* is not a trustee for purposes of limitation, and a suit by a beneficiary against a *benamidar* in whose name a bond stood and who had realised the money due thereunder, would be governed by this article 25 A 62=A W N 1902 185, see also 30 M 298 This section applies to cases where a definite sum of money ... the law says he must hold for the use of ... to cases where it is sought to recover from ... have received but which he failed to rec... to recover money under a void agreement ... 47 Ind Cas 214 Art 62 does not apply to an equitable claim against a trustee liable to account for an account and ascertainment of what may be due 35 C W N 145=60 M L J 1=33 Bom L R 168

63 For money payable for interest upon money due from the defendant to the plaintiff	"Three years" *	When the interest becomes due

Notes—This article is not applicable where under the terms of the bond, both interest and principal are chargeable upon the property hypothecated as security 101 P R 1884

64 For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them	"Three years" *	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time and then when that time arrives

* Substituted by Act 11 of 1923

Notes —Under this Act, it is only . . . . the defendant or his agent" that could . . . suit on an account stated by this art . . . an account, the items of which are all one side, does not amount to an 'account stated" 15 A 1 But where, on a certain day the book containing the 'accounts of two parties is examined, and a balance is struck in favour of one of them and orally approved and admitted by the other, a suit brought for such balance ' on the basis of the account book ' is a suit on account stated within the meaning of this article 2 A 641 ; see also 61 I A 273=56 A 376 (P C), 38 C W N 813=A I R 1934 P C 144=67 M L J 103; A I R 1931 All 325; 33 P L R 213, 54 A 506 Where the account is not signed by the defendant this section does not apply 2 A 872, 10 C 284 (F B), 38 Ind Cas 227; 7 O C 126 This section applies to accounts stated orally 7 C 256, 2 C L R 346 2 A 641 A W N 1881 29 A I R 1933 Sind 324

65 For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency	Three years *	When the time specified arrives or the contingency happens

Notes —Where the defendant agreed to give half of the land to plaintiff who was to help him in recovering it, the period of limitation ran from refusal of defendant after recovery 71 Ind Cas 40

66 On a single bond, where a day is specified for payment	Three years *	The day so specified

Notes —Where a person borrows money on a written document for the purpose of a person, and the creditor knows also for whose purpose the money is wanted the executant of the document is only an agent and is not apparently liable U B R (1892 1896) vol II 470 Where a document provided for payment of principal and interest at a certain rate and in default to pay interest at a specified rate till payment, the document is not a single bond under art 66 or 67 138 P R 1890 A 'single bond mentioned in this article means a deed wherein a party acknowledges himself to be bound or indebted to another in a certain sum of money which he promises to pay 8 O C 77, 26 P R 1892.

67 On a single bond, where no such day is specified	Three years *	The date of executing the bond

Notes —A *Tamasuk* payable on demand falls under this article 3 P R 1874 This article has to be read with the previous article and both these articles apply to unregistered bonds 30 P W R 1916=32 Ind Cas 575

68 On a bond subject to a condition	Three years *	When the condition is broken

Notes Th . . . t on administration surety bond such . . . e, a bond which becomes enforce . . . 56 Ind Cas 968=12 Bur L T 225, but see . . . all 403

69 On a bill of exchange or promissory note payable at a fixed time after date	Three years *	When the bill or note falls due
70 On a bill of exchange payable at sight or after sight, but not at a fixed time	Three years *	When the bill is presented
71 On a bill of exchange accepted payable at a particular place	Three years *	When the bill is presented at that place
72 On a bill of exchange or promissory note payable at a fixed time after sight or after demand	Three years *	When the fixed time expires

* Substituted by Act 11 of 1923

M L J 232=A I R 1937 Mad 685, see also A I R 1933 Pat 701, 15 Lah 242=A I R 1934 Lah 42, 35 P L R 91 In a transaction between customer and banker this article applies A I R 1934 Lah 42=15 Lah. 242

61 For money payable to the plaintiff for money paid for the defendant	"Three years"*	When the money is paid

Notes —In a suit to recover a balance with reference to payments made by plaintiff on account of defendants where no mutual account or reciprocal demand exists, the plaintiff could not recover any item due more than three years 24 W R 390, see also 5 C 321 So also any other suit to recover money paid for defendant's share of expenses or on his behalf is governed by this article 9 A 244 see also 9 M L T 212=8 Ind Cas 1102, 8 M L J 271, 7 A L J 588=6 Ind Cas 878, 13 C 155, 25 C 844 P C =25 I A 95=2 C W N 402 (P C), 6 C W N 903, 5 Bom L R 725; 146 P L R 1909

62 For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use	'Three years'*	When the money is received

Notes —This article is intended to cover cases to which the English form of common law action for money had and received applied 2 C 393 Where the consideration for the purchase money paid has wholly failed it is recoverable as money received for the use of the buyer, and a suit to recover it is governed by this article 15 C 51 A suit to recover the excess of the contribution paid by the holders

emoluments of the office holder, A suit for the recovery of purchase =8 Ind Cas 1087, see also 30 M by the mortgagor to recover the 41 This article is applicable to a over specific sums received during

A *benamidar* is not a trustee for purposes of limitation, and a suit by a beneficiary against a *benamidar* in whose name a bond stood and who had realised the money due thereunder, would be governed by this article 25 A 62—A W N 1902 185

to cases where a definite sum of money the law says he must hold for the use of to cases where it is sought to recover from have received but which he failed to rec

to recover money under a void agreement falls under this section 46 Ind Cas 26, 47 Ind Cas 214 Art 62 does not apply to an equitable claim against a trustee liable to account for an account and ascertainment of what may be due 35 C W N 145=60 M L J 1=33 Bom L R 168

63 For money payable for interest upon money due from the defendant to the plaintiff	'Three years'*	When the interest becomes due

Notes —This article is not applicable where under the terms of the bond, both interest and principal are chargeable upon the property hypothecated as security 101 P R 1884

64 For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them	Three years *	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time and then when that time arrives

* Substituted by Act 11 of 1923

Notes —Under this Act, it is only the defendant or his agent that could suit on an account stated by this art an account, the items of which are stated' 15 A 1 But where, on a cert of two parties is examined, and a balance is struck in favour of one of them and orally approved and admitted by the other, a suit brought for such balance on the basis of the account book is a suit on account stated within the meaning of this article 2 A 641 ; see also 61 I A. 273=56 A 376 (P C), 38 C W N 813=A I R 1914 P C 144=67 M L J 103 A I R 1931 All 325, 33 P L R 213, 54 A 506 Where the account is not signed by the defendant this section does not apply 2 A 872, 10 C 284 (F B), 38 Ind Cas 227, 7 O C 126 This section applies to accounts stated orally 7 C 256, 2 C L R 346 2 A 641 A W N 1881, 29, A I R 1933 Sind 324

65 For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency	Three years *	When the time specified arrives or the contingency happens

Notes —Where the defendant agreed to give half of the land to plaintiff who was to help him in recovering it, the period of limitation ran from refusal of defendant after recovery 71 Ind Cas 40

66 On a single bond, where a day is specified for payment	Three years *	The day so specified

Notes —Where a person borrows money on a written document for the purpose of a person, and the creditor knows also for whose purpose the money is wanted the exe ... ly liable U B R ... t of principal and ... ecified rate till pay ... 138 P R 1890 A ... a party acknowledges himself to be bound or indebted to another in a certain sum of money which he promises to pay 8 O C 77, 26 P R 1892.

67 On a single bond, where no such day is specified	Three years *	The date of executing the bond

Notes —A *Tamasuk* payable on demand falls under this article 3 P R 1874 This article has to be read with the previous article and both these articles apply to unregistered bonds 30 P W R 1916=32 Ind Cas 575

68 On a bond subject to a condition	Three years *	When the condition is broken

Notes —This section does not apply to a suit on administration surety bond such bond not being a bond subject to a condition, *i e*, a bond which becomes enforceable only when a specified condition is broken 56 Ind Cas 968=12 Bur L T 225, but see 1 Rang 463

69 On a bill of exchange or promissory note payable at a fixed time after date	Three years *	When the bill or note falls due
70 On a bill of exchange payable at sight or after sight, but not at a fixed time	Three years *	When the bill is presented
71 On a bill of exchange accepted payable at a particular place	Three years *	When the bill is presented at that place
72 On a bill of exchange or promissory note payable at a fixed time after sight or after demand	Three years *	When the fixed time expires

* Substituted by Act 11 of 1923

73. On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue	"Three years."*	The date of the bill or note.

Notes.—The period of limitation for documents in the nature of a promissory note payable on demand is under this article. 1 M. 301; see also A. I. R. 1932 Oudh 255=9 O. W. N. 912; 135 Ind. Cas. 824=33 Bom. L. R. 1274=A. I. R. 1931 Bom. 542.

74. On a promissory note or bond payable by instalments.	"Three years."*	The expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment.

Notes.—To bring a case under this article it is necessary that the bond should also provide that if default be made in payment of one instalment the whole shall be due. 111 P. L. R. 1901=74 P. R. 1901. This article contemplates a suit for the whole amount of the bond. 6 C. P. L. R. 24; 95 P. L. R. 1909=107 P. W. R. 1907=4 Ind. Cas. 956.

75. On a promissory note or bond payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due	"Three years."*	When the default is made, unless where the payee or obligee waives the benefit of the provisions, and then when fresh default is made in respect of which there is no such waiver.

Notes.—A mere abstinence from suit is not sufficient to prove waiver of right to enforce the terms of an instrument, which provides that, on default of payment of any instalment the whole shall become due. [illegible] M. 285; 35 C. 394; [illegible] Ind. Cas. 523; 18 Ind. Cas. 600. In the case of a debt payable by instalments the subsequent acceptance by the obligee of an overdue instalment, without insisting on payment in full would operate as a waiver and suspend limitation. 5 C. [illegible]; [illegible] P. R. 1870; 18 C. W. N. 1010; see also [illegible] P. R. 1800; 29 A. 431; 11 A. 262; 5 C. [illegible]; 12 M. 1[illegible]; 32 M. 254; 25 Ind. Cas. 902; 20 Ind. Cas. [illegible]. But part payment of overdue instalment does not constitute a waiver. 20 Ind. Cas. 125; F. C. W. N. 65. Where a bond is not so worded as to compel a creditor to sue for the whole amount at once on the first default, he could not be compelled to sue for the whole. [illegible] A. 223; 3 A. L. J. 473; 31 C. [illegible]; 11 Ind. Cas. [illegible]. The general principle that time begins to run from the earliest date is applicable to cases of instalment bonds under this article. 8 Pat. L. J. [illegible] Ind. Cas. 418. Instalment bond gives promisee option to sue for whole amount in default of any one instalment. Right to realise amount by instalment is not lost by failure to exercise option. A. I. R. 1933 Lah. 820; see also [illegible] C. L. J. [illegible]=58 C. 513; see also 1934 A. L. J. [illegible]=151 Ind. Cas. [illegible]=A. I. R. 1934 All. [illegible] (F. B.); A. I. R. 1934 Lah. [illegible]=152 Ind. Cas. [illegible]. To claim benefit of Art. 74 obligee must prove waiver of promisor's entitling him to sue on first default. Waiver may be inferred from circumstances. A. I. R. 1932 Oudh [illegible]=9 O. W. N. [illegible]=137 Ind. Cas. 223; see also A. I. R. 1933 Nag. [illegible]; A. I. R. 1934 All. [illegible]; A. I. R. 1934 All. 1030=1934 A. L. J. [illegible]; 30 N. L. R. 314=A. I. R. 1934 Nag. 160; A. I. R. 1934 Oudh [illegible]; [illegible] N. L. R. 42.

76. On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen	"Three years."*	The date of the delivery to the payee.
77. On a dishonoured foreign bill where protest has been made and notice given	"Three years."*	When the notice is given.

* Substituted by Act [illegible]

78 By the payee against the drawer of a bill of exchange, which has been dishonoured by non acceptance	"Three years *	The date of the refusal to accept
79 By the acceptor of an accommodation bill against the drawer	"Three years *	When the acceptor pays the amount of the bill
80 Suit on a bill of exchange promissory note or bond not herein expressly provided for	"Three years *	When the bill, note or bond becomes payable

Notes —A suit for money due on a simple pledge, without possession of immovable property falls under this article 11 M 153

81 By a surety against the principal debtor	' Three years *	When the surety pays the creditor

Notes —The article is to be restricted to sureties who have paid the creditor and not extended to sureties who have not paid the creditor but have been compelled to pay contribution to a co surety who has paid the creditor 98 P R 1881 Under this article time begins to run from the time when the surety pays the creditor and the principal debtor remains liable to be sued for three years only after his payment has been made 60 Ind Cas 23

82 By a surety against a co surety	'Three years '*	When the surety pays anything in excess of his own share
83 Upon any other contract to indemnify	"Three years "*	When the plaintiff is actually damnified

cover the damages paid by him to the
runs under the article only from the
e when the damages were recovered
t for the recovery of the money due on
account of the value of the goods supplied by the plaintiffs as commission agents to the defendants is governed by this article 46 Ind Cas 51=59 P L R 1918 Contract to indemnity need not be by express stipulation 136 Ind Cas 481=33 Bom. L R 1200=A I R 1932 Bom 25 Suit by commission agent to recover loss on transactions on behalf of his constituents is governed by Art 83 136 Ind Cas 481=33 Bom L R 1200=A I R 1932 Bom 250, see also 31 P L R 666=12 Lah 190

84 By an attorney or vakil for his costs of a suit or a particular business there being no express agreement as to the time when such costs are to be paid	Three years *	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance

Notes —In a suit by an attorney against his client to recover the cost of an application to the High Court, the date of the judgment in the application was held to be the termination of the application 22 C 943, see also 7 M 1, 7 B 518

85 For the balance due on a mutual open and current account where there have been reciprocal demands between the parties	' Three years "*	The close of the year in which the last item admitted or proved is entered in the account such year to be computed as in the account

Notes —In order to bring a suit for the recovery of money within this article the plaintiff must show that there was a mutual open and current account between the parties and that there have been reciprocal demands between the parties 5 C 759 An account which is open and current and when there are reciprocal demands between the parties is a mutual account 10 M 259 see also 3 A 523 6 B 134, 22 B 606, 17 M 203, 23 M L J 516 27 Ind Cas 879 37 Ind Cas 300 Mutual account means where each of the parties has received and paid on other's account There must be reciprocal demands between parties 12 Lah 420=32

* Substituted by Act 11 of 1923.

73 On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue	'Three years *	The date of the bill or note

Notes—The period of limitation for documents in the nature of a promissory note payable on demand is under this article 1 M 301, see also A I R 1932 Oudh 281=9 O W N 912, 135 Ind Cas 804=33 Bom L R 1234=A I R 1931 Bom 542

74 On a promissory note or bond payable by instalments	'Three years *	The expiration of the first term of payment as to the part then payable, and for the other parts the expiration of the respective terms of payment

Notes—To bring a case under this article it is necessary that the bond should also provide that if default be made in payment of one instalment the whole shall be due 111 P L R 1901=74 P R 1901 This article contemplates a suit for the whole amount of the bond 6 C P L R 24, 95 P L R 1909=107 P W R 1907=4 Ind Cas 956

75 On a promissory note or bond payable by instalments which provides that if default be made in payment of one or more instalments, the whole shall be due	'Three years *	When the default is made unless where the payee or obligee waives the benefit of the provisions and then when fresh default is made in respect of which there is no such waiver

Notes—A mere abstinence from suit is not sufficient to prove waiver of right to enforce the terms of an instrument, which provides that on default of payment of any instrument the whole shall become due 7 M 577 7 M 583, 36 C 394, 21 Ind Cas 653, 18 Ind Cas 690 In the case of a debt payable by instalment the subsequent acceptance by the obligee, of an overdue instalment, without insisting on payment in full, would operate as a waiver and suspend limitation 5 C 97, 78 P R 1890, 18 C W N 1010, see also 78 P R 1890, 29 A 431, 11 A 482; 5 C 97, 12 M 192, 32 M 284, 38 Ind Cas 302, 20 Ind Cas 329 But part payment of overdue instalment does not constitute a waiver 20 Ind Cas 156, 8 C W N 66 Where a bond is not so worded as to compel a creditor to sue for the whole amount at once on the first default, he could not be compelled to sue for the whole 30 A 123, 3 A L J 463, 31 C 297, 11 Ind Cas 526 The general principle that time begins to run from the earliest date is applicable to cases of instalment bonds under this article 3 Pat L J 46 Ind Cas 418 Instalment bond gives promisee option to sue for whole amount in default of any one instalment Right to realize amount by instalment is not lost by failure to exercise option A I R 1933 Lah 849, see also 52 C L J 591=58 C 615, see also 1934 A L J 1035=151 Ind Cas 585=A I R 1934 All 661 (F B), A I R 1934 Lah 283=149 Ind Cas 972 To claim benefits of Art 74 obligee must prove waiv[illegible] first default Waiver may be inferred from circu[illegible] W N 250 =137 Ind Cas 223, see also A I [illegible], A I R 1934 All 1039=1934 A L J 1056, [illegible] 314=[illegible] 1934 [illegible] 180, A I R 1934 Oudh 455, 28 N L R 44

76 On a [illegible]	'Three years '*	The date of the delivery to the payee
[illegible] a dishonoured foreign bill where protest has been made and notice given	'Three years '*	When the notice is given

* Substituted by Act II of 1923

78 By the payee against the drawer of a bill of exchange, which has been dishonoured by non acceptance.	Three years *	The date of the refusal to accept
79. By the acceptor of an accommodation bill against the drawer	"Three years *	When the acceptor pays the amount of the bill
80. Suit on a bill of exchange promissory note or bond not herein expressly provided for	"Three years *	When the bill, note or bond becomes payable

Notes—A suit for money due on a simple pledge, without possession of immovable property falls under this article 11 M 153

81 By a surety against the principal debtor	"Three years *	When the surety pays the creditor

Notes—The article is to be restricted to sureties who have paid the creditor and not extended to sureties who have not paid the creditor but have been compelled to pay contribution to a co surety who has paid the creditor 98 P R 1881 Under this article time begins to run from the time when the surety pays the creditor and the principal debtor remains liable to be sued for three years only after his payment has been made 60 Ind Cas 23

82 By a surety against a co surety	'Three years *	When the surety pays anything in excess of his own share
83 Upon any other contract to indemnify	"Three years *	When the plaintiff is actually damnified

Notes — ... ver the damages paid by him to the ... uns under the article only from the ... when the damages were recovered ... or the recovery of the money due on account of the value of the goods supplied by the plaintiffs as commission agents to the defendants is governed by this article 46 Ind Cas 51=59 P L R 1918 Contract to indemnity need not be by express stipulation 136 Ind Cas 481=33 Bom. L R 1200=A I R 193 ... transactions on behalf of his ... 481=33 Bom L R 1200=... Lah 190

84 By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid	Three years *	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance

Notes—In a suit by an attorney against his client to recover the cost of an application to the High Court, the date of the judgment in the application was held to be the termination of the application 22 C 943 see also 7 M 1 7 B 518

85 For the balance due on a mutual open and current account where there have been reciprocal demands between the parties	Three years *	The close of the year in which the last item admitted or proved is entered in the account such year to be computed as in the account

Notes—In order to bring a suit for the recovery of money within this article the plaintiff must show that there was a mutual open and current account between the parties ... 759 An ... between th ... 22 B 606 ... Mutual account means where each of the parties has received and paid on other's account There must be reciprocal demands between parties 12 Lah 420=32

* Substituted by Act 11 of 1923

I L R 954=A I R 1931 Lah 241, see also 29 N L R 20=15 N L J 105=A I R 1933 Nag 50, 15 Lah 652= 36 P L R 325=A I R 1934 Lah 358 Payment can be made by goods 142 Ind Cas 133=29 N L R 20=15 N L J 105 =A I R 1933 Nag 50 Where account is not mutual limitation runs from last transaction and not close of year A I R 1933 Nag 50=29 N L R 20 To prove mutual account it is necessary to *establish mutual dealings* A I R 193? All 38=132 Ind Cas 420 35 Bom L R 929=A I R 1933 Bom 450

86 On a policy of insurance when the sum assured is payable immediately after proof of the death or loss has been given to or received by *the insurers*	Three years *	When proof of the death or loss is given or received to or by the insurer whether by or from the plaintiff, or any other person

Notes —The right of action does not accrue till the Insurance Company had received notice of loss and has refused or neglected to make good the loss which has been notified to it 6 B H C A C 34

87 By the assured to recover premia paid under a policy voidable at the election of the insurers	Three years *	When the insurers elect to avoid the policy
88 Against a factor for an account	Three years *	When the account is during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates
89 By a principal against his agent for movable property received by the latter and not accounted for	'Three years'*	Ditto

Notes —In a suit against an agent for an account limitation runs from the date on which the agency ceased 13 I A 123=14 C 144 P C Limitation does not commence to run against a person to whom certain goods are entrusted by another for sale on the latter's account, the moment any particular item of goods is sold 26 C 715=3 C W N 524 The words 'movable property in this article include money 24 A 27=28 I A 27 P C see also 8 C W N 113, 3? C 719=1 C L J 232 A suit by a principal against his agent for an account as a preliminary step to enable the principal to recover from the agent money received by him and not accounted for is governed by this article 1 C L J 147 14 C W N 122=5 Ind Cas 59 A suit for money found due on an account and a suit for an account are really one and the same thing Such a suit lies on the death of an agent against his legal representatives 16 C W N 1042 A suit by a principal against an agent, [illegible]

[illegible]

C 1347=38 C W N 211 Money received by agent for principal is movable property 54 M 654=62 M L J 45 Refusal may be inferred from circumstances and failure to comply with demand may sometimes amount to refusal A I R 1933 Cal 704=56 C L J 172

90 Other suits by principals *against agents for neglect or* misconduct	'Three years *	When the neglect or misconduct *becomes known to the plaintiff*

Notes —In order to hold a legal practitioner responsible [illegible] caused to his client [illegible] to show that the ad[illegible] on his part and of [illegible] a practitioner of h[illegible]

* Substituted by Act 11 of 1923

Suit for damages for negligence against advocate, is governed by Art 90 9 Rang 525=A I R 1932 Rang 1 Where agent appointed to realise debts withholds money, suit against him is governed by article 90 58 C 923=133 Ind Cas 177 =A I. R 1931 Cal 738

91 —To cancel or set aside an instrument not otherwise provided for	"Three years."	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him

Notes —A suit to set aside a Will is not governed by this article 23 C 1 P C =22 I A 171 A suit to set aside a deed executed by the plaintiff on the ground of undue influence and fraud is governed by this article 15 C 58 P C =14 I A 148 ; see also 6 C W N 840 P C =25 A 1 , 23 A 383 When a *wakfnama* is invalid in law, it is not incumbent upon persons not parties to it to get the same set aside before suing for the properties comprised in it 4 C L J 442 This article applies to suits to set aside instruments affecting plaintiffs rights "made either between the plaintiff and defendant or between parties or which the plaintiff was not one" 122 P L R 1902 A suit to enforce only operative part of an award is not a suit to cancel or set aside an award 23 A 383 P C =5 C W N 585 A suit to recover possession of land in unlawful possession of the defendant by virtue of a *Kobala* executed by plaintiff's father is governed by this article 6 C W N 863 This article does not apply to Wills 82 P L R 1909=88 P W. R 1909=4 Ind Cas 923 A suit for a declaration that the defendant whose name appeared as lessee had no interest under the lea[illegible] *benamdar* for the plaintiff is not to cancel or set as[illegible] does not apply 11 A L J 105 This article is [illegible] an instrument on the ground of undue influence 29 M L J 592—[illegible] This article does not apply to a suit for possession, where the plaintiff alleges and proves that a sale deed is void because it was executed by him whilst a minor but does not claim expressly to have it cancelled or set aside 20 Bom L R 802= 47 Ind Cas 581 (F B) Article 91 is restricted to suit for cancelling instrument for forgery, etc , and that too by parties to instrument A I R 1931 Oudh 333=7 Luck 131=8 O W N 593 , see also A I R 1934 Oudh 55=11 O W N 193=9 [illegible] A I R 1934 All 567=1934 A L J 817 , 37 C W N 1141 Limitation [illegible] ature of the deed 61 I A 224=9 Luck [illegible] 97 M L J 7 (P C) , A I R 1931 Oudh 34=7 O W N 1129

92 To declare the forgery of an instrument issued or registered	"Three years *"	When the issue or registration becomes known to the plaintiff

Notes —In a suit for declaration of the forgery of an instrument the period of three years is to be calculated from the date, to the knowledge of the plaintiff, of its first issue, registration or attempted enforcement 4 C 209 , 2 C L R 561

93 To declare the forgery of an instrument attempted to be enforced against the plaintiff	"Three years *"	The date of the attempt

Notes —Where in a suit for possession, the plaintiff averred that the sale deed upon which the defendant relied was a forgery, the suit was not governed by this article 20 M 338

94 For property which the plaintiff has conveyed while insane	"Three years *	When the plaintiff is restored to sanity and has knowledge of the conveyance
95 To set aside a decree obtained by fraud or, for other relief on the ground of fraud	Three years*	When the fraud becomes known to the party wronged

* Substituted by Act 11 of 1923.

Notes—Under this article time begins to run from the date when the fraud becomes known to the party wronged 1 N L R 20 A suit for rectification of a deed on the ground of fraud falls under this article 6? P R 1901 The "other relief" referred to in this article need not be of the same kind as setting aside a decree obtained by a fraud, and that article is not limited to specific relief on the [illegible] de compensation for damage [illegible] 27 M 343 A suit for [illegible] decree which dispossessed [illegible] article and not by art 144 [illegible] This article is applicable to suit to set aside consent decree on ground of fraud A I R 1933 Sind 53=145 Ind Cas 777

96 For relief on the ground of mistake	Three years*"	When the mistake becomes known to the plaintiff

Notes—A suit to recover money alleged to have been paid by the plaintiff over and above what was due by him on account of road cess is governed by this article 12 C 533 A suit for rectification of lease on the ground of a common mistake is governed by this article 48 Ind Cas 972

97 For money paid upon an existing consideration which afterwards fails	"Three years*"	The date of the failure

Notes—A suit on a covenant in a sale deed against dispossession of the vendee, [illegible] paid for sale is in time if brought [illegible] suit by the vendee to recover money [illegible] ndor is not governed by *art* 97 and [illegible] e date of the original cause of action and not from the date of the decree of the appellate Court 3 *C P L R* 173 This article cannot be applied to a suit for money brought by a usufractuary mortgagee the cause of action being the failure of the mortgagor to secure the mortgagee in possession 21 M 242=8 M L J 81 A person who has had no occasion to sue for possession of property cannot have his right to property extinguished by the lapse of three years under this article 55 Ind Cas 407 Words 'date of failure of consideration is that date on which plaintiff ceased to derive any benefit from transfer 140 Ind Cas 760=35 P L R 104=A I R 1933 Lah 83, see also A I R 1933 Nag 244=144 Ind Cas 724, 1932 M W N 51, A. I R 1933 Mad 382, 1934 A L J 864=A I R 1934 All 547, A. I R 1934 Mad 224

98 To make good out of the general estate of a deceased trustee the loss occasioned by a *breach of* trust	Three years*	The date of the trustee's death, or if the loss has not then resulted, the date of the loss

Notes—The joint family property of the father and sons which passes by survivorship to the sons on the death of the father does not form the general estate of the deceased trustee (father) within the meaning of this section 20 M L J 633=33 M 308=8 M L T 321=7 Ind Cas 898

99 For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co sharers	Three years*	The date of the payment in excess of the plaintiff's own share

Notes—Where plaintiff and defendant are the proprietors of two separate plots of land separately assessed with revenue but covered by the same *foujee* number a suit to recover the amount of revenue paid by plaintiff in respect of defendant's plot

* Substituted by Act 11 of 1923

of land is governed by art 99 15 C 542 Where decree is against *Karta* for debt for joint family purposes and after partition *Karta* takes on himself alone the whole liability, for suit for contribution by *Karta* against other members time begins to run from this latter date and this article applies 1931 A L. J 651=A I R 1931 All 652; see also A. I R 1933 Oudh 478=10 O W N 919

100 By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution	"Three years"*	When the right to contribution accrues
101 For a seaman's wages	"Three years"*	The end of the voyage during which the wages are earned
102 For wages not otherwise expressly provided for by this schedule	"Three years"*	When the wages accrue due

Notes.—A suit by *Dasris* of a temple to recover dues payable to them as remuneration in respect of their services in connection with a temple is not governed by this article 94 Ind Cas 826

103 By a Muhammadan for exigible dower (*muwajjal*)	'Three years'*	When the dower is demanded and refused or (where, during the continuance of the marriage no such demand has been made) when the marriage is dissolved by death or divorce

Notes In a suit for prompt dower by a Muhammedan lady limitation runs only demand having been made the same is refused 78 Ind Cas 706, see also A I R. 1933 Pesh 37

104 By a Muhammadan for deferred dower (*muwajjal*)	"Three years"*	When the marriage is dissolved by death or divorce

Notes—Wife's claim to deferred dower acrues only when she becomes aware of the fact of divorce pronounced in her absence A I R 1931 Mad 647=133 Ind Cas 375

105 By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee	'Three years'*	When the mortgagor reenters on the mortgaged property

Notes—The period of limitation applicable to a suit by a mortgagor against the mortgagee, brought after redemption of the mortgage, for compensation for loss caused by the latter having cut trees standing on the mortgaged property is contained in art 105 and time begins to run from the date of the redemption 50 Ind Cas 152=6 O L J 53 This article applies to cases where the mortgagor has not to bring a suit for redemption but has only to sue for the recovery of the surplus collection 26 C W N 123

106 For an account and a share of the profits of a dissolved partnership	"Three years"*	The date of the dissolution

Notes—Though plaintiff in this case sued for a dissolution of partnership and accounts the suit must be treated as one for accounts of a terminated partnership to which this article would apply 69 P R 1902, 1 S L R 169, 11 Ind Cas 288, 27 M 14=18 M L J 151, see also A I R 1933 Mad 353, 33 P L R 713, 66 M L J 625=A I R 1934 Mad 162 A suit which is virtually for dissolution of a partnership though in form one for accounts is governed by Art 120 and not by Art. 106 48 Ind Cas 89, see also 67 M L J 413

107 By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate	Three years,*	The date of the payment
108 By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease	"Three years"*	When the trees are cut down

* Substituted by Act II of 1923

109 For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant	"Three years"*	When the profits are received

or to recover profits received by the mortgagee
l not by art 105 1 Bom L
e begins to run from the
When a usufructuary mort-
ntitle l to recover rents and
he can only recover profits
uit which will be governed
263 Claim against tres
passer for rents and profits for period beyond ... ars is time barred 121 Ind Cas 337=A I R 1931 Pat 114 Limitation runs from date of receipt of such profits A I R 1933 Lah 615 Suit by co sharer for his share of rents against co sharer in exclusive possession is governed by Art 120 and not by Art 109 A I R 1933 Lah 951, se also 131 Ind Cas 511=A I. R 1931 Rang 150

110—*For arrears of rent* ...	"Three year"*	When the arrears become due

Notes.—The point of time for which under t
becomes du
nee of the a
rent based o
this article 26 A 138; but see 133 Ind Cas
Cal 790

111. By a vendor of immovable property for personal payment of unpaid purchase money	"Three years"*	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance

Notes—A suit for unpaid purchase money due under a registered sale deed by enforcement of the vendors lien on the property sold is governed by this article 24 M 233, 21 M 233, but see 29 M 335, 9 O C 284, 30 A 172 (F B), 21 C 57 (P C)

112 For a call by a company registered under any Statute or Act	"Three years"*	When the call is payable

Notes—*Vide* 102 Ind Cas 705=A I R 1927 Lah 543

113 For *specific performance* of a contract	"Three years"*	The date fixed *for the performance*, or, if no such date is fixed, when the plaintiff has notice that performance is refused

Notes—Cause of action for a suit for specific performance does not arise until the plaintiff's title to specific performance is denied by the defendant 2 C 323, 5 A 263 A suit for money due under an award is governed by this article 16 A 3 In the absence of a date fixed *for performance of* the contract time does not commence to run till there has been demand and refusal 1923 Rang 44, see also 33 P L. R 562=A I R. 1932 Lah 36, 36 Bom L R 290=A I R 1934 Bom 171 Date fixed for performance should be date fixed by express contract and *not by* necessary implication 1933 A I J 300=A I R 1933 All 410.

114 For the rescission of a contract	"Three years"*	When the facts entitling the plaintiff to have the contract rescinded first become known to him

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* Substituted by Act II of 1923

115 For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for	Three years **	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases

Notes —When a loan is made on one day and is made repayable on some future date the period of limitation for a suit to recover the loan must be computed from the day on which it is made repayable and such a suit falls under this article 15 M 380=2 M L J 42 A suit to recover water rate at a special sum per acre under an agreement with defendant is governed by art 115 171 P R 1883 Where a mortgagee's right to sue for his money is a right arising from a contract between the
· and not a contractual
it on *hath chits* contain
e on an adjustment of
t 115 applies to medical
J 949 Art 115 is residuary 130 Ind Cas 574=A I R 1931 Lah 309

	Part VII— Six years	
116 For compensation for the breach of a contract in writing registered	Six years	When the period of limitation would begin to run against a suit brought on a similar contract not registered

Notes —A suit to recover *post diem* interest on a registered contract due will be

governs a suit to recover arrears of rent upon a registered contract 15 C 22, 19 C 489, 27 C 205=4 C W N 76 A suit on an *ekrar* executed by the priest of an idol for recovery of arrears of maintenance is governed by art 116 23 C 645 A suit to recover arrears of rent due on a registered rent note is governed by art 116 and not art 110 37 B 656=15 Bom L R ... for damages for
the breach of a registered contract ... 73
Liability arising out of registered ...
37 C W N 633=1933 A L J 5 ... es
not apply to suit to recover proper ... C
84=37 Bom L R 904=12 P L T 563

117 Upon a foreign judgment as defined in the Code of Civil Procedure, 1908	* Six years *	The date of the judgment

Notes —8 W R 32, 107 Ind Cas 573=A I R 1927 Lah 200

118 To obtain a declaration that an alleged adoption is invalid or never in fact, took place	Six years *	When the alleged adoption becomes known to the plaintiff

Notes —This article relates to an adoption of a son according to the ordinary Hindu law 9 M L J 196 A suit for possession of immovable property on the ground that an adoption is invalid is governed by this article 74 P W R 1771 but see 27 C 242, 9 C W N 222, 26 A 40, 17 A 167, 22 C 609, 8 A 644 26 B 720=24 A 195 This article does not apply to a suit for possession ... ever

* Substituted by Act 11 of 1923

though the plaintiff can only succeed on an alleged adoption 11 C P L R 49, 96 P R 1908, 1)12 M W N 77 P C, 27 C 242 A suit to set aside an invalid adopt on and recover possession of property from the person alleged to be adopted son is governed by this article 6 Pat 506=1927 Pat 145

119 To obtain a declarat on that an adoption is valid	Six years' *	When the rights of the adopted son, as such, are interfered with

Notes —This article applies only to a suit for a declaration as to the validity of

adopted son as such 13 M L J 145, 43 P L R 1904=3 P R 1904 Art 119 appl es to a suit " words in it mal ing did take place 28 validity or the factu interference contemplated by this article must amount to an absolute denial of the status of adopt on and an unconditional exclusion from the enjoyment of rights in virtue of that status 1 Rang 186=74 Ind Cas 970

1*0 Suit for which no period of limitation is provided elsewhere in this schedule	Six years *	When the r ght to sue accrues

Notes — ... se ought not to be regarded as coming unde ... clearly satisfied that it does not come under ... ecific cases 26 C 564=3 C W N ... r this article is ... nts the six years ... of the account, and not from the ... 13 Bom L R 1014 This article governs ... prayer 6 C P L R 53 Under this art ... by way of interest for more than 6 years p ... 5 C W N 356 This ... r declatory reliefs with ... tion 23 C L J 561=34 Ind ... title to immovable property ... nsidered to be a suit on a ... ot hereditary, a suit to oust a ... rned by this article 44 C L J 33 ... =9 ... Ind Cas 205

	Part VIII — Twelve years	
121 To avoid incumbrances or undertenures in an ent re estate sold for arrears of Government revenue or in a Patni taluq or other saleable tenure sold for arrears of rent	Twelve years	When the sale becomes final and conclusive

Notes — Avoid must be interpreted to me ... right of avo dance 4 C 860=4 C L R 6 ... of an auction purchaser of an estate sold for ... itself Such a person cannot avoid himself of t ...

122 Upon a judgment obtained in Brit sh In l a, or a recognisance	Twelve years *	The date of the judgment or recognisance

Notes —*Vide* 3 B 193 33 C 56 19 C L J 19 20 C W N 58, 9 C W N 95*, 67 M L J 413

* Substitued by Act 11 of 1923

123 For a legacy or for a share of a residue bequeathed by a testator or for a distributive share of the property of an intestate	Twelve years *	When the legacy or share becomes payable or deliverable

Notes—This article is applicable to a suit for share of the residue of the testator's movable ... only ... is al... either ... testator 9 C 79 12 M 487, see also 13 Bom L R 1025 24 Ind Cas 45 42 Ind Cas 121, 41 C 271, 19 M 425 A I R 1934 Rang 318, 1934 A L J 230 This article is not meant to be applied to cases of reversioners suing to recover property which has been held for some intervening time by a widow, whether that property be movable or immovable 10 Bom L R 210

124 For possession of an hereditary office	Twelve years *	When the defendant takes possession of the office adversely to the plaintiff *Explanation* — An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed

Notes—A suit for ... limitation under this ar... right to recover an h... found to have been in p... 3 Ind Cas 123=4 I... N 329=27 I A 69, 20 M L J 781=6 Ind Cas 990

125 Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who if the female died at the date of instituting the suit would be entitled to the possession of land to have an alienation of such land made by the female declared to be void except for her life or until her remarriage	Twelve years *	The date of the alienation

Notes—A suit by an adopted son, for a declaration in respect of an alienation, by the widow who adopted him made before the adoption is governed by this article 6 Ind Cas 443=8 M L T 121 This article applies where the widow has alienated her husband's property 15 P W R 1910=5 Ind Cas 843 26 P R 1896, 29 A 239=4 A L J 160 A suit by the nearer or more remote reversioner is governed by this article 37 A 195=13 A L J 196=26 Ind Cas 737 but see 25 Ind Cas 463, 21 M L T 63 41 M 659 (F B) A hypothecation of immovable property is an alienation A W N 1890 184 As regards suits for declaration of invalidity of alienations made by widows beyond their life time this article is applicable to an action brought by an immediate reversioner and the suit by a remote reversioner, is governed by Art 120 15 P R 1916=33 Ind Cas 161 see also 52 M L J 13=99 Ind Cas 668

126 By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property	Twelve years *	When the alienee takes possession of the property

Notes—In a suit under the Mitakshara law for possession of land by setting aside illegal sales by his father the plaintiff's only cause of action is the taking possession by the defendant of what was the son's joint share in the property and his suit is governed by this article 23 W R 419, see also A W N 1881 109 70

* Substituted by Act II of 1923

that time under the article only runs from the date when possession is obtained The result was that the view of the first two judges that the article operated to ... limitation failed This case was considered by *Richardson* ... *Richardson J* held that limitation under ... on which the property or the title was ... mortgagee to the transferee The other ... to any de ... the effect ... 50 C 62, ... trustee ... finitely ... that under the article possession must be taken on the date of transfer and accordingly it is not certain which of the views held by the Madras Full Bench in the ... oured by him After consulting the Local Govern ... have come to the conclusion that the period of ... ate when the sale becomes known to the plaintiff ... On this point the Select Committee say 'There ... points namely, (i) the date of the ... d (iii) the date proposed by us, the ... it including that of all the High ... at this Article should be adopted as drafted by us" *Report of the Select Committee*

* "134A To set aside a transfer of immovable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration	Twelve years	When the transfer becomes known to the plaintiff
134B by the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment, to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration	Twelve years	The death, resignation or removal of the transferor
134C By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of movable property comprised in the endowment which has been sold by a previous manager for a valuable consideration	Twelve years.	The death resignation or removal of the seller'

Notes —This amendment is made in order to give effect to the recommendation ... their Report —*State* ... and 134 B, which ... give each succes- ... of limitation, but will lay the successors of a transferee for value open to the risk of a suit perhaps several generations after all chance of obtaining evidence has disappeared The strength of these criticisms is weakened when section 7 of the Charitable and Religious Trusts ... obtaining ... admit the ... the bringi ... We propo ... transferrin ... is normal *in all similar cases Where the subjects of the transfer* is immovable property, then in the majority of suits the new article will have much the same effects as the provision we originally proposed, for ... after the expiry of twelve years from the death of th ... and are likely to diminish rapidly as time goes ...

* Substituted by Act I of 1929

our decision to fix a definite limit of time for the bringing of these suits re opens the question of the duration of the period of limitations, for while three years seemed enough so long as each successive manager had a right to sue it seems inadequate when limitation is to begin from and end finally on a definite date We propose therefore, to restore the original period of twelve years and to achieve this we have *transferred Article 48C and included it in the Schedule as Article 131 C with the* necessary change in the third column

'We considered the suggestion that these new Articles should include a specific

on suits to establish rights which arise under the Hindu law, and it has always been recognised that Sikhs and Jains are subject to Hindu law except in so far as they may have varied it by their own custom We think the safer course is to omit specific reference to Sikhs and Jains '—*Report of the Select Committee*

135 Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immovable property mortgaged	"Twelve years'*	When the mortgagor's right to possession determines

Notes—Where notwithstanding the recital in a deed of mortgage that possession had been given to mortgagee from the date of the deed possession was not actually given, a suit by the mortgagee for possession of the property mortgaged is not governed by art 113 but by art 135 134 P R 1883 The law of limitation of a conditional sale would be that given in art 135, *viz*, 12 years from the time when the mortgagor s right of possession determines 12 C 614 For limitation to run mortgagor must have either actual possession or unconditional right to recover possession 57 B 593=35 Bom L R 956=A I R 1933 Bom 439

136 By a purchaser at a private sale for *possession of immovable* property sold when the vendor was out of possession at the date of the sale	"Twelve *years* *	When the vendor is first entitled *to possession*

Notes—The expression 'vendor in this article means a vendor other than the auction purchaser mentioned in art 138 31 C 681 F B=8 C W N 476 A suit b the purchaser of the equity of redemption for possession of the mortgaged property, is governed by this article 130 P R 1906=100 P L R 1907 The possession contemplated by this article includes actual possession and also such possession as a member of joint Hindu family is presumed to have in the family property until excluded therefrom 9 M L T 397 *This article obviously refers to* cases where no possession formal or actual, has been obtained through Court 2 Bom L R 1021=25 B 275

137 Like suit by a purchaser at a sale in execution of a decree when the judgment debtor was out of possession at the date of the sale	'Twelve years *	When the judgment debtor is first entitled to possession

Notes—If property subject to prior mortgage is purchased at Court auction, the auction purchaser takes only a right to redeem the earlier mortgage and he cannot set up a plea of adverse possession 35 Ind Cas 753 This section does not apply to a purchase at a sale held in execution of mortgage decree 1923 Mad 160 This section does not apply to a suit for possession by a purchaser at a sale held in execution of a mortgage decree A I R 1923 Mad 160=50 M L J 183

138 Like suit by a purchaser at a sale in execution of a decree, when the judgment debtor was in possession at the date of the sale	'Twelve years *	The date when the sale becomes absolute

Notes—The words 'the date of the sale' mean the *date of the actual sale* and not the date of the confirmation of the sale 17 M 89=3 M L J 267, 14 C 644 A suit to obtain possession of land by a purchaser of it at a private sale from the son

* Substituted by Act XI of 1923

article applies to suits for possession of Buddhist monasteries 1 Bur L J 108 Article 144 is a residuary article applicable to suits for possession of immovable property not otherwise especially provided for in the Act A I R 1934 All 993=1934 A L J 973=152 Ind Cas 1 Where there is no doubt that the title to the lands is in the plaintiff the onus is on the defendants to prove the adverse possession relied on A I R 1934 P C 77=36 Bom L R 408=1934 A L J 466=38 C W N 400=61 I A 50=56 A 111

145 Against a depositary or pawnee to recover movable property deposited or pawned	*Part IX—* *Thirty years* "Thirty years *"	The date of the deposit or pawn

Notes—This article will apply to a deposit by a customer of money with a banker to be placed to the customer's credit in an account current 74 P R 188*, note A suit for recovery of ornaments deposited with the defendant is governed by this article 26 B 430 Where one man's property is handed by that man to ... something in the ... as a person with ... 02=61 C 119

146 Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged	"Thirty years *"	When any part of the principal or interest was last paid on account of the mortgage debt

Notes—Where no part of the principal or interest of the mortgage debt has been paid the extended period of limitation under this article could not be taken advantage of 4 C 283=3 C L R 336

146A By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession	Thirty years *	The date of the dispossession or discontinuance

Notes—This article cannot reasonably be restricted to streets or roads formed by the Municipality on lands belonging to or acquired by it the proprietory right 25 M 635=12 M L J 37

147 By a mortgagee for foreclosure or sale	*Part X—* *Sixty years* Sixty years	When the money secured by the mortgagee becomes due

Notes—Th ... which the mortgagee ... in the alternative *i e*, ... ge 14 C 730 (F B), ... 151 P R 1888

148 Against a mortgagee to redeem or to recover possession of immovable property mortgaged	"Sixty years *"	When the right to redeem or to recover possession accrues Provided that all claims to redeem arising under instruments of mortgage of immovable property situate in Lower Burma which had been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day

* Substituted by Act XI of 1923

Notes —The possession of a mortgagee holding ov
can sue under
3 applies to a
for value b
lemption 2
acknowledgment to be effective for the purpose of
person claiming the entirety of the mortgagor s rigl

149 Any suit by or on behalf of the Secretary of State for India in Council	Sixty years	

Notes —A Corporation is not entitled to claim
154, see also 36 P L R 251=A I R 1934 Lah 96
suit by a person who claims title under *pollahs* from
I A 203=8 C W N 809 Under this article there
favour of Government apart from longer period
N 285=66 M L J 134 (P C)

SECOND DIVISION A

150 Under the Code of Criminal Procedure 1898 from a sentence of death passed by a Court of Session	Seven da	
150A † "Under the Code of Criminal Procedure, 1898, from a finding rejecting claim under section 443 of that Code	Seven da	
151 From a decree or order of any of the High Courts of Judicature at Fort William, Madras, Bombay Lahore and Rangoon ‡ in the exercise of its original jurisdiction	Twenty d	

Notes—*Vide* 10 C 652, 59 C 1215

152 Under the Code of Civil Procedure, 1908 to the Court of a District Judge	Thirty	

Notes —Under this article an appeal to the District Court must be filed within 30 days from the date of the decree U B R (1892 1896) vol II, 525 If appeal from an order is not filed in time, the correctness of the order cannot be questioned 23 C 279

153 Under the same Code to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council	Thirty days *	The date of the order
154 Under the Code of Criminal Procedure 1898, to any Court other than a High Court	Thirty days *	The day of the sentence or order appealed from.
155 Under the same Code to a High Court except in the cases provided for by article 150 and article 157	Sixty days	Ditto

* Substituted by Act XI of 1923.
† Article 150 A has been inserted by Act XIII of 1923
‡ Substituted by Act VIII of 1930

article applies to suits for possession of Buddhist monasteries 1 Bur L J 108 Article 144 is a residuary article applicable to suits for possession of immovable property not otherwise especially provided for in the Act A I R 1934 All 993=1934 A L J 973=152 Ind Cas 1 Where there is no doubt that the title to the lands is in the plaintiff the onus is on the defendants to prove the adverse possession relied on A I R 1934 P C 77=36 Bom L R 408=1934 A L J 466=38 C W N 400=61 I A 50=56 A 111

145 Against a depositary or pawnee to recover movable property deposited or pawned	*Part IX—Thirty years* "Thirty years *"	The date of the deposit or pawn

Notes—This article will apply to a deposit by a customer of money with a banker to be placed to the customer's credit in an account current 74 P R 188? note A suit for recovery of ornaments deposited with the defendant is governed by this article 26 B 430 Where one man's property is handed by that man to another, he becomes a depositary of it unless of course, there is something in the terms of that handing over which would prevent his being treated as a person with whom it was deposited at all A I R 1934 Cal 87=58 C L J 502=61 C 119

146 Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged	"Thirty years *"	When any part of the principal or interest was last paid on account of the mortgage debt

Notes—Where no part of the principal or interest of the mortgage debt has been paid the extended period of limitation under this article could not be taken advantage of 4 C 283=3 C L R 336

146A By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession	"Thirty years" *	The date of the dispossession or discontinuance

Notes—This article cannot reasonably be restricted to streets or roads formed by the Municipality on lands belonging to or acquired by it the proprietory right 25 M 635=12 M L J 37

147 By a mortgagee for foreclosure or sale	*Part X—Sixty years* Sixty years	When the money secured by the mortgagee becomes due

Notes—Th[illegible] which the mortgagee [illegible] in the alternative i e, [illegible] ge 14 C 730 (F B) [illegible] 151 P R 1886

148 Against a mortgagee to redeem or to recover possession of immovable property mortgaged	"Sixty years *"	When the right to redeem or to recover possession accrues Provided that all claims to redeem arising under instruments of mortgage of immovable property situate in Lower Burma which had been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day

* Substituted by Act XI of 1923

Notes —The possession of a mortgagee holding over after period fixed for redemption is not adverse, and the mortgagor can sue under this article 29 A 115=A W N 1897, 214 The provision in art 148 applies to all persons claiming under the mortgagee, except *bonafide* purchaser for value but not to suits against strangers nor to suits which are not suits for redemption 2 M 226 Under this article an acknowledgment to be effective for the purpose of saving limitation must be some

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149 Any suit by or on behalf of the Secretary of State for India in Council	*Sixty years *	When the period of limitation would begin to run under this Act against a like suit by a private person

favour of Government apart from longer period 61 I A 78=51 C 262=38 C W N 285=66 M L J 134 (P C)

SECOND DIVISION APPEALS

150 Under the Code of Criminal Procedure 1898 from a sentence of death passed by a Court of Session	Seven days	The date of the sentence
150A † *Under the Code of Criminal Procedure 1898, from a finding rejecting claim under section 443 of that Code	Seven days	The date of finding
151 From a decree or order of any of the High Courts of Judicature at Fort William, Madras, Bombay Lahore and Rangoon ‡ in the exercise of its original jurisdiction	Twenty days	The date of the decree or order

Notes —*Vide* 10 C 652 59 C 1215

152 Under the Code of Civil Procedure, 1908 to the Court of a District Judge	Thirty days	The date of the decree or order appealed from

Notes —Under this article an appeal to the District Court must be filed within 30 days from the date of the decree U B R (1892 1896) vol II, 525 If appeal from an order is not filed in time, the correctness of the order cannot be questioned 23 C 279

153 Under the same Code, to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council	*Thirty days *	The date of the order
154 Under the Code of Criminal Procedure 1898, to any Court other than a High Court	*Thirty days *	The day of the sentence or order appealed from
155 Under the same Code to a High Court except in the cases provided for by article 150 and article 157	Sixty days	Ditto

* Substituted by Act XI of 1923.
† Article 150 A has been inserted by Act XIII of 1923
‡ Substituted by Act VIII of 1930

... Procedure 155 46 C. s 449 Cr ... iys period of limitation prescribed by Art 155 54 C 52=101 Ind Cas 657

156 Under the Code of Civil Procedure 1908, to a High Court, except in the cases provided for by article 151 and article 153	Ninety days	The date of the decree or order appealed from

... Rangoon to the High ... Art 156 13 C 221 ... preliminary decree ... Cal 796

157 Under the Code of Criminal Procedure 1898, from an order of acquittal	Six months	The date of the order appealed from

Notes—An appeal by Local Government, against an acquittal, will be in time if presented within six months from the date of acquittal, though more than 60 days from that date 2 C 436 (F B), see also 38 C W N 354

THIRD DIVISION APPLICATIONS

158 Under the Code of Civil* Procedure, 1908, to set aside an award	Ten days	When the award is filed in Court and notice of the filing has been given to the parties *

Notes—This article is applicable to any applications to set aside an award on any of the grounds mentioned in section 521 and on no others 8A 64=A.W N 1886, 2. It must be made within 10 days from the time the award was submitted to the Court 29 C 36, 5 C L R 25, 124 P R 1880 An application to set aside an award must be made within 10 days from the time the award arrives at the Registrar's office for the purpose ... C. W. N. 813 A Cou... within 10 days allowed ... 79 Period requisite for ... ing period for filing objections to award A I R 1933 Rang 38=142 Ind Cas 835; see also A I R 1932 Mad 588. Section 158 applies to objection filed under para 15 and not those filed under para 12 or para 14 Sch 2, C. P Code A I R 1933 All. 648=1933 A L J 519 Court should not pronounce judgment on award within 10 days of its receipt 40 L W 364=A I R 1934 Mad 619=67 M L J 377

159 For leave to appear and defend a suit under summary procedure referred to in section 128 (2) (f) 'or under Order XXXVII'† of the same Code	'Ten days'‡	When the summons is served
160 For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing	Fifteen days	When the application for review is rejected
161 F...	"Fifteen days"‡	The date of the decree or order

...tion

* Substituted by Act 18 of 1919 † Inserted by Act 30 of 1925

‡ Substituted by Act 11 of 1923

[illegible] ex	Twenty days	The date of the decree or order
[illegible] to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs	Thirty days	The date of the dismissal

Notes —An application for restoration must be made within 30 days from the date of the dismissal 31 C 150=8 C W N 97, see also 17 M L J 215, 83 P R 1902, see also A I R 1933 Pat 557

164 By a defendant, for an order to set aside a decree passed *ex parte*	' Thirty day ‡	The date of the decree or, where the summons was not duly served when the applicant has knowledge of the decree

[illegible]

processes against the person or against the property 13 W R 430 A notice under s 248 C P Code of 1882 is not such a process 8 Ind Cas 663 A mere notice of execution is not such a process 2 C 123 An attachment is such a process 9 C 869 The expression ' knowledge of the decree means the knowledge of the particular decree which is sought to be set aside 11 Bom L R 1296=4 Ind Cas 586 The phrase "duly served in this article must be construed to mean 'served in [illegible] of the proceeding 11 S L R 71 [illegible] 778=A I R 1931 Oudh 369, see [illegible] 2=1932 M W N 133 Words ' where summons was not duly served refer to summons for first hearing 139 Ind Cas 354=33 P L R 838=A I R 1932 Lah 539 In case of due service limitation starts from decree A I R 1932 Oudh 326=9 O W N 896 Knowledge of definite decree is necessary 27 N L R 53

165 Under the Code of Civil Procedure 1908, by a person dispossessed of immovable property and disputing the right of the decree holder or purchaser at a sale in execution of a decree to be put into possession	' Thirty days ' ‡	The date of the dispossession

Notes —An application to set aside an execution sale two years from the date thereof, and one and a half years from its confirmation is barred under art 165 7 C 91=9 C L R 53, see also 6 O C 44 This article is wide enough to include the [illegible] has been dispossessed of immovable property and [illegible] possession 25 A 343=A [illegible] and 167 cannot apply to an [illegible] limited to cases contemplated [illegible]

166 Under the same Code, to set aside a sale in execution of a decree, * including any such application by a judgment debtor §	"Thirty days ‡	The date of the sale

Notes —An application to set aside a sale held in contravention of s 294 of C P Code of 1882 must be made within 30 days reckoned from the date of the sale 13

* Substituted by Act 10 of 1927
‡ Substituted by Act XI of 1923
† Substituted by Act VIII of 1935
§ Inserted by Act 1 of 1927

M. L J. 231. The date of sale contemplated by this article is not the date of sale on which the lot is knocked down but the date of its completion, and it is that date on which the full amount of the purchase money is paid by the auction purchaser, as provided by s 307 of the C P Code of 1882 1 P W R 1909=1 Ind Cas 12 The period of limitation for setting aside an auction sale begins to run from the date of sale and has no reference either to the date of deposit of purchase money or the date of confirmation of the sale 19 N L R 162 Where actual notice to set aside [illegible] notice is no bar 60 C 1106=A I R 1933 Cal [illegible] on ground of omission to notify under order [illegible] s 47 C P Code is governed by Art. 166 1931 [illegible]

167. Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree	"Thirty days"*	The date of the resistance or obstruction

Notes —The period of limitation for an application under s 328 of the Civil Procedure Code, 1882 complaining against a judgment debtor for obstruction to the execution of a warrant of possession commences to run from the date of obstruction or resistance complained of 5 M 113; but see 26 A 365 An application under s 318 of the Code of Civil Procedure, 1882, for delivery of possession in execution of a decree is governed by art 129 and not by art 167. 13 M 504

168 For the readmission of an appeal dismissed for want of prosecution	"Thirty days"*	The date of the dismissal

Notes —The order of dismissal of an appeal for default would become final on [illegible] the thirty days provided for in [illegible] the appeal [illegible] [illegible] A Court has no power to extend [illegible] C P Code [illegible] 1890, 196 [illegible] Code is gov[illegible] Cas 45

169 For the re hearing of an appeal heard *ex-parte*	"Thirty days"*	The date of the decree in appeal or where notice of the appeal was not duly served, when the applicant has knowledge of the decree.

Notes —Where a respondent had no notice of an appeal art 169 can have no application 18 M L J 96 A Court has no power to extend the time prescribed by this article for an application for re-hearing of an appeal heard *exparte* in the absence of the respondent 66 P R 1885

170 For leave to appeal as a pauper	"Thirty days"*	The date of the decree appealed from.

Notes —A leave to appeal in *forma pauperis* must be made within 30 days allowed by this article 19 B 48: see also 29 Ind Cas. 1003=13 A L J 635

171 Under the Code of Civil Procedure, 1908, for an order to set aside an abatement	Sixty days	The date of the abatement

Notes [illegible] Court of original jurisdiction [illegible] this article is expressly con[illegible] and it does not apply to that

* Substituted by Act XI of 1923

172 Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the d smissal of a suit or an appeal	"Sixty days *	The date of the order of dismissal
173 For a review of judgment except in the cases provided for by article 161 and article 162	Ninety days	The date of the decree or order [1]

Notes —10 C 297 , 26 B 485 , 42 Ind Cas 54

174 For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified	' Ninety days *	When the payment or adjustment is made

Notes —This article does not debar a defendant from setting up a plea of discharge of the mortgage decree in answer to an application for an order absolute 8 C W N 102 A plea [illegible] per od of l mitation had [illegible] 87 Ind Cas 635 Uncer [illegible] decree 67 M L J 562=

175 For payment of the amount of a decree by instalments	Six months	The date of the decree

Notes —Under [illegible] must be made withi [illegible] after such period w [illegible] decree from being barred u der art 179 of t e act 14 C 340 The date of decree is not a *terminus a quo* of an execution appl cation if there is an agreement between the parties alter ng the date 73 Ind Cas 671

176 Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party	Ninety days †	The date of the death of the deceased plaintiff or appellant

Notes —11 C W N 156 27 B 162 6 C L J 715=11 C W N 1100; 29 A 535 9 C W N 369 17 C W N 829 P C=18 C L J 9

177 Under the same Code to have the legal representative of a deceased defendent or of a deceased respondent made a party	Ninety days †	The date of the death of the deceased defendant or respondent

Notes —Per od of l mitation for br nging in the representatives of a deceased respondent in a second appeal is the one prescr bed by this article 10 Bom L R 509 see also 40 Ind Cas 1006 43 Ind Cas 871=15 A L J 85, 41 Ind Cas 730, 44 Ind Cas 9 Under Art 177 of the Act as amended by s 2 of Act 26 of 1920 the period of limitat on for bringing on record the legal representative of a deceased defendant or respondent is still six months 4 Lah 367 The per od of l mitation under Art 177 is now 90 days and does not continue to be six months 1923 Bom 299 (1)

178 Under the same Code for the fil ng in Court of an award in a su t made In any matter referred to arb trat on by order of the Court or of an award made in any matter referred to arb trat on w thout the in tervent on of a Court	Six months † *	The date of the award

Notes —The act of an arb trator in handing an award to the proper off cer to be filed is not an appl cation within the meaning of this Act 7 C 338=9 C L R 209.

* Substituted by Act 11 of 1923 † Subst tuted by Act 26 of 1920

M L J 231 The date of sale contemplated by this article is not the date of sale ... the date of its completion, and it is that date
money is paid by the auction purchaser,
le of 1882 1 P W R 1909=1 Ind Cas 12
an auction sale begins to run from the date
date of deposit of purchase money or the
date of confirmation of the sale 19 N L R 162 Where actual notice to set aside sale is received absence of formal notice is no bar 60 C 1106=A I R 1933 Cal 886 Application for setting aside sale on ground of omission to notify under order 21 rr 22 and 66, though falling under s 47 C P Code is governed by Art 166 1931 A L J 119=A I R 1931 All 145

167 Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree	'Thirty days *	The date of the resistance or obstruction

Notes —The period of limitation for an application under s 328 of the Civil Procedure Code, 1882 complaining against a judgment debtor for obstruction to the ... commences to run from the date of obstruction
A 365 An application under s
of possession in execution of a
3 M 504

168 For the readmission of an appeal dismissed for want of prosecution	'Thirty days' *	The date of the dismissal

default would become final on
the thirty days provided for in

under order 41, rule 10 (2) C P Code is governed by Art 168 ... M L J ... A I R 1932 Mad 170=136 Ind Cas 45

169 For the re hearing of an appeal heard *ex-parte*	"Thirty days *	The date of the decree in appeal or where notice of the appeal was not duly served when the applicant has knowledge of the decree

Notes —Where a respondent had no notice of an appeal art 169 can have no application 18 M L J 96 A Court has no power to extend the time prescribed by this article for an application for re-hearing of an appeal heard *exparte* in the absence of the respondent 66 P R 1885

170 For leave to appeal as a pauper	"Thirty days *	The date of the decree appealed from

Notes —A leave to appeal in *forma pauperis* must be made within 30 days allowed by this article 19 B 48 see also 29 Ind Cas, 1003=13 A L J 635

171 Under the Code of Civil Procedure 1908 for an order to set aside an abatement	Sixty days	The date of the abatement

Notes —This article relates to an application to a Court of original jurisdiction 154 P R 1879 (F B) The limitation prescribed by this article is expressly confined to the legal representative of a deceased plaintiff and it does not apply to that of a deceased judgment debtor 3 B 221

* Substituted by Act XI of 1923

182. For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908 —*contd*	Three years, or where a certified copy of the decree or order has been registered, six years —*contd*	3 (where there has been a review of judgment) the date of the decision passed on the review, or 4 (where the decree has been amended) the date of amendment, or 5 (where the application next hereinafter mentioned has been made) the date of '*the final order* passed on an application made'* in accordance with law to the proper Court for execution or to take some step in aid *of execution of* the decree or order, or 6 [("in respect of any amount, recovered by execution of the decree or *order*, which the decree holder has been directed to refund by a decree passed in a suit for such refund) the date of such last mentioned decree or, in the case of an appeal therefrom, the date of the final decree of the Appellate Court or of the withdrawal of the appeal,"]* or 7 (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date *Explanation I*—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by But where the decree or order has been passed jointly in favour of more persons than one, such application if made by any one or more of them, or by his or their representatives, *shall take effect in favour of* them all Where the decree or order has been passed severally against more persons than one, *distinguishing portions* of the subject-matter as pay-

* Substituted by Act IX of 1927

182 For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908,—*concld*	Three years, or, where a certified copy of the decree or order has been registered six years —*concld*	able or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against But, where the decree or order has been passed *jointly against more* persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all *Explanation II*— the *'Proper Court' means* the Court whose duty it is to execute the decree or order,

Notes —Where only some of several persons affected by a decree have appealed against it, the date of the appellate decree forms the basis from which the period of limitation, under this article should be computed even in the case of those who have not appealed against the original decree 10 Bom L R 939=33 B 39 The expres-

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appeal was abated is not a decree or order as contemplated by clause (2) and time runs only from the date when the order is passed finally disposing of the appeal

or to take such step and not merely to keep the decree alive A I R, 1934 P C 14=61 I A 62=38 C W N 229 (P C) So long as there is any question sub judice in appeal preferred by any party execution period is suspended 60 C 1=59 I A. 283=A I R 1932 P C 165 (P C)=36 C W. N 803 Order made by appellate Court having the effect finally disposing of appeal, gives new starting point for period of limitation A. I. R 1933 P. C. 68 (P C)=60 I A. 83=60 C 662

183 To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council	Twelve years	When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent to the person entitled thereto or his agent the twelve years shall be computed from the date of such revivor, payment or acknowledgement, or the latest of such revivors, payments or acknowledgements as the case may be

Notes—The word 'revivor" in this article does not mean the same thing as one or more of the matters which are mentioned in Art 182 clauses (5) and (6) To constitute a 'revivor" of a decree within the meaning of Art 183, there must be expressly
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1931 Pat
of decree debt is realized in execution and not only against judgment debtor who makes that payment but against other judgment-debtor also 12 P L T 888=10 Pat 213

THE SECOND SCHEDULE

Repealed by Act VIII of 1930

THE THIRD SCHEDULE

Repealed by Act XVII of 1914

THE LOCAL AUTHORITIES LOANS ACT, 1914.

ACT NO. IX OF 1914.

RECEIVED THE G.G.'S ASSENT ON THE 28TH FEBRUARY, 1914

An Act to consolidate and amend the law relating to the grant of loans to Local Authorities

Preamble

WHEREAS it is expedient to consolidate and amend the law relating to the borrowing wers of local authorities; It is hereby ena ollows —

Short title and extent

1 (1) This Act may be called the Local Authorities Loans Act, 1914

(2) It extends to the whole of British India, including the Sonthal Parganas

Definitions

2 In this Act, 'local authority means any person legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax within any local area,

'funds' used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess rate, duty or tax which such authority is legally entitled to impose and any property vested in such authority,

'prescribed" means prescribed by rules made under this Act, and

'work" includes a survey, whether incidental to any other work or not

Borrowing powers of local authorities

3 (1) A local authority may, subject to the prescribed conditions, borrow on the security of its funds or any portion there of for any of the following purposes, namely —

(i) the carrying out of any works which it is legally authorized to carry out,

(ii) the giving of the relief and the establishment and maintenance of relief works in times of famine or scarcity,

(iii) the prevention of the outbreak or spread of any dangerous epidemic disease

(iv) any measures which may be connected with or ancillary to any purposes specified in clause (ii) and (iii)

(v) the repayment of money previously borrowed in accordance with law

Provided that nothing in clause (v) shall be deeemed to empower a local authority to fix a period for the repayment of any money borrowed thereunder which, when the period fixed for the repayment of the money previously borrowed is taken into account, will exceed the maximum period fixed for the repayment of a loan by or under any enactment for the time being in force

(2) Nothing in this section shall be deemed to authorize any local authority—

(a) to borrow or spend money for any purpose for which, under the law for the time being in force it is not authorized to apply its funds or

(b) to borrow money by means of the issue of bills or promissory notes payable within any period not exceeding twelve months

Power to Governor General in Council to make rules

4 (1) The Governor General in Council may make rules consistent with this Act as to—

(i) the nature of the funds on the security of which money may be borrowed,

(ii) the works for which money may be borrowed,

(iii) the manner of making applications for permission to borrow money,

(iv) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries,

(v) the cases and the forms in which particulars of applications and proceedings and orders thereon shall be published,

(vi) the cases in which the Local Government may make loans without the previous sanction of the Governor General in Council, and the cases in which such previous sanction must be obtained,

(vii) the cases in which the Local Government may authorize Local Authorities to take loans from persons other than the Local Government and the cases in which the previous sanction of the 'Local Government*,' must be obtained to such loans,

* The words within quotations have been substituted by Act 38 of 1920

(*viii*) the manner of recording and enforcing the conditions on which money is to be borrowed,

(*ix*) the manner and time of making or raising loans,

(*x*) the inspection of any works carried out by means of loans,

(*xi*) the instalments, if any, by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon,

(*xii*) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan,

(*xiii*) the attachment of such funds, and the manner of disposing of or collecting them,

(*xiv*) the accounts to be kept in respect of loans,

(*xv*) the utilization of unexpended balances of loans either in the reduction in any way of the debt of the local authority, or in carrying out any works which that authority legally authorized to carry out, and the sanction necessary to such utilization,

and as to all other matter incidental to carrying this Act into effect

(2) The Governor General in Council may, subject to such conditions and restrictions as he thinks fit, delegate to be a Local Government, or to Local Governments generally, all or any of his powers to make rules under sub section (1)

(3) All rules made under this Act shall be published in the *Gazette of India* if made by the Governor General in Council or, if made by the Local Government in the exercise of a delegated power, in the local official Gazette, and, on such publication, shall have effect as if enacted in this Act

Remedy by attachment if loan not repaid

5 If any money borrowed in accordance with the provisions of this Act, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government, if itself the lender, may, and if the Local Government is not the lender, shall, on the application of the lender, attach the funds on the security of which the loan was made After such attachment, no person except an officer appointed in this behalf by the Local Government, shall in any way deal with the attached funds, but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings

Attachment not to defeat prior charges legally made

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law, but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of the liability in respect of which such attachment is made

Issue of short term bills

6 (1) Subject to the provisions of section 26 of the Indian Paper Currency Act, 1910,* the local authorities mentioned in Schedule I, and any other local authority to which the Governor General in Council may, by notification in the *Gazette of India*, extend the provisions of this section may with the previous sanction of the Governor General in Council borrow money by means of the issue of bills or promissory notes payable within any period, not exceeding twelve months, for any purpose for which such local authority may lawfully borrow money under any law for the time being in force

Provided that the amount of the bills or promissory notes which may be so issued, shall not exceed, when the amount of the other moneys for the

* Act II of 1910

being borrowed by such local authority is taken into account, the total amount which such local authority is empowered by law to borrow

(2) The Governor General in Council may, by general or special order, regulate the conditions on which money may be borrowed or repaid under this section

Loans not to be effected except under this Act

7. Except as provided by or under this Act no local authority shall, for any purpose, borrow money upon, or otherwise charge, its funds, and any contract otherwise made for that purpose after the passing of this Act shall be void

Provided that nothing herein contained shall be deemed—

(a) to preclude any local authority from exercising the borrowing powers conferred on it by any special enactment now or hereafter in force, or

(b) to affect the power conferred on any local authority by any such enactment to charge its funds, by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied

Application of Act to loans existing previous to the 5th of September, 1871

8 The Secretary of State in Council shall be entitled to the remedy mentioned in section 5 for the recovery of any money lent by him to any local authority before the fifth day of September, 1871, and the interest due on such money

9 Repeals [Repealed by Act XII of 1927]

SCHEDULE I

(*See section* 6)

The Corporation of Calcutta
The Commissioners for the Port of Calcutta
The Commissioners for the Port of Chittagong
The Municipal Corporation of the City of Bombay
The Trustees of the Port of Bombay
The Corporation of Madras
The Trustees for the Port of Madras
The Municipal Committee of Rangoon
The Commissioners for the Port of Rangoon
The **
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SCHEDULE II

ENACTMENTS REPEALED

[*Repealed by Act XII of 1927*]

THE LOCAL AUTHORITIES PENSIONS AND GRATUITIES ACT, 1919.

ACT No. I OF 1919

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 26TH FEBRUARY, 1919

An Act to extend the powers of local authorities in regard to the granting of pensions and gratuities

WHEREAS it is expedient to extend the powers of local authorities in regard to the granting of pensions and gratuities, It is hereby enacted as follows —

Short title and extent

1 (1) This act may be called the Local Authorities Pensions and Gratuities Act, 1919

(2) It extends to the whole of British India, including the Santhal Parganas

Definition

2 In this Act "officer" means any person who has undertaken the service of Government and who, immediately prior to undertaking such service, was paid and employed solely by a local authority and, but for undertaking such service, would in the ordinary course have continued in such employment.

Power to grant extraordinary pensions and gratuities

3 Notwithstanding anything contained in any enactment or in any rule made thereunder regulating the powers of local authorities, and without prejudice to any powers conferred by or under any such enactment, a local authority may grant a pension or gratuity to any officer thereof who may, since the fourth day of August, 1914, have been wounded or otherwise incapacitated in the service of Government and to the widow or child of any such officer who may have died in consequence of injuries received or illness contracted since the fourth day of August, 1914, in the course of such service

Provision as to pensions and gratuities

4 (1) Such pension or gratuity may be granted in addition to any pension or gratuity payable to the officer or his wife or child, as the case may be, under any general or special orders of His Majesty in Council or of the Governor General in Council, but shall not, save with the sanction of the "Local Government,"* exceed the amount of the pension or gratuity to which the officer or his wife or child would have been entitled under any such orders if his employment by the local authority had been service for the same time and on the same pay under Government

(2) Any pension granted under this Act may be made to take effect from such date subsequent to the fourth day of August, 1914, and subject to such conditions as the local authority may think fit

Procedure

5 Subject to the provisions of this Act, the decision of a local authority to grant a pension or gratuity thereunder shall be made in such manner and shall be subject to such sanction as may be prescribed by any enactment or rule regulating the grant by such local authority of pensions and gratuities :

Provided that in every case the sanction of the Local Government shall be necessary

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THE INDIAN LUNACY ACT, 1912

ACT NO IV OF 1912.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 16th MARCH, 1912.

An Act to consolidate and amend the law relating to Lunacy

WHEREAS it is expedient to consolidate and amend the law relating to lunacy ; It is hereby enacted as follows :—

Notes —The Lunacy Act contemplates only the question of lunacy or sanity at [illegible] that the Act shall extend to [illegible]

[illegible] dent in the city of Calcutta 35 C W N. 1045=A I R 1931 Cal 61=58 Cal 919 =133 Ind Cas 188

* The words within quotations have been substituted by Act 38 of 1920.

PART I

PRELIMINARY

CHAPTER I.

Short title and extent

1. (1) This Act may be called the Indian Lunacy Act, 1912

(2) It extends to the whole of British India, including British Baluchistan, the Santhal Parganas, and the pargana of Spiti

Savings

2 Nothing contained in Part II shall be deemed to affect the powers of any High Court which is or hereafter may be established under the Indian High Courts Acts * 1861 to 1911, over any person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic

Definitions

3 In this Act, unless there is anything repugnant in the subject or context,—

(1) "asylum' means an asylum, or "mental hospital † for lunatics established or licensed by Government

(2) "cost of maintenance in an asylum includes the cost of lodging, maintenance, clothing medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum "together with any other charges specified in this behalf by the Governor General in Council, in exercise of any power conferred upon him by this Act :' ‡

(3) "District Court' means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency towns

(4) "criminal lunatic" means any person for whose "detention'† in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, § or of section 30 of the Prisoners Act, 1900 ‖, "or of under section 130A of the Indian Army Act 1911 " ¶

(5) ' lunatic 'means an idiot or person of unsound mind

(6) 'Magistrate' means a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the Local Government to perform the functions of a Magistrate under this Act

(7) "medical officer' means a gazetted medical officer of Government, and includes a medical practitioner declared by general or special order of the Local Government to be a medical officer for

(8) 'medical practitioner" means a
medicine and surgery which can be registere
dance with the law for the time being in fo
practitioners, and includes any person declared by general or special order of the Local Government to be a medical practitioner for the purposes of this act

(9) "prescribed" means prescribed by this Act or by rule made thereunder

(10) 'reception order 'means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition

(11) "relative" includes any person related by blood, marriage or adoption and

(12) "rule means a rule made under this Act

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* 24 & 25 Vict c 104 to 1 & 2 Geo 5 c 18

† The words within quotations have been inserted by Act 6 of 1922

‡ The words within quotations have been substituted by Act 11 of 1923

§ Act V of 1898

‖ Act III of 1900

¶ The words within quotations have been inserted by Act 33 of 1923

Clause(5)—Lunacy or insanity may be shortly defined as a defect of reason, consisting either in its total or partial absence or in its perturbance *Banks* v *Goodfellow*, L R Q B 549 *Smee* v *Smee* 5 P D 14 *Jenkins* v *Morris* (1880) 14 Ch D 674, see also 4 C L J 115 24 W R 524, 2 A L J 154, 31 C 210 A man who suffers from the hallucinations and illusions is not necessarily insane *Taylor*, 6th Ed 846, 8 A L J 179 The term 'lunatic' or idiot in s 3 of the Lunacy Act does not include imbeciles and defectives In its legal and medical ... ficient in intellect Unsoundness ... person within the term 'lunatic', ... his own affairs A I R 1934 Nag 127=A L R 1934 Nag 2

Clause 11 —The wife's brother is a relative 22 C W N 511

PART II

Reception, Care and Treatment of Lunatics

CHAPTER II

Reception of Lunatics

Reception of persons in asylum

4 (1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by section 8, 16 and 98

Provided that any person in charge of an asylum may, with the consent of tw ... ion a ... ler in

(2) A boarder received in an asylum under the proviso to sub section (1) shall not be detained in the asylum for more than twenty four hours after he has given to the persons in charge of the asylum notice in writing of his desire to leave such asylum

Notes —An order passed by a District Magistrate under this part is purely an executive order 73 Ind Cas 697

Reception Orders on petition

Application for reception order

5 An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact, and, where the person signing is a relative the exact manner in which he is related to the lunatic or petitioner

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court and if such application has been made, a certified copy of the order made thereon shall be attached to the petition

(4) No application for a reception order shall be entertained in any area outside the Presidency towns unless the Local Government has, by notification in the Local official Gazette, declared such area as an area in which reception orders may be made

Notes ... made to the Magistrate within the local limits ... es 24 C 133 The appli... of the particulars and two ... libel is maintainable for any

defamatory matter contained therein *Vide Hobson v Pare*, (1899) 1 Q B 455 A verified petition was presented to the District Judge by the petitioner affirming that a certain person was a lunatic and praying for his own appointment as a guardian of the person and property of the alleged lunatic The District Judge without any ... on of the question whether an inquisition had been asked for ... quisition issued a commission on the ... condition of the lunatic No notice ... his two daughters have been served ... ion reported to the effect that the ... strict Judge thereon appointed the ... of the lunatic *Held* that such ... ition which the Act contemplated and the Court ... ing with such cases under the Act A I R 1932 Cal 20=35 C W N 1045

6 "(1) Subject to the provisions of sub section (3) the petition shall be presented by the husband or wife of the alleged lunatic, or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from India or otherwise from making the presentation, by the nearest relative of the alleged lunatic who is not so prevented "*

Application by whom to be presented

(2) If the petition is not presented by the husband or wife, or where there is no husband or wife, by the nearest relative of the alleged lunatic, the peti- ... statement of the reasons why it is not so presented, and ... oner with the alleged lunatic, and the circum ... the petition

... a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within four- ... lly seen the said lunatic ... y the petitioner, and the ... , such statement

Notes—The pet ... or wife or a relative of the alleged ... y the petition is not presented by ... with the alleged lunatic and the ... d *Halsbury*, Vol 19 p 53 See also 10 Bom L R 772

7 (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

Procedure upon petition for reception order

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do

... reception order may properly be made forthwith, he ... ite (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other enquiries of or concerning the alleged lunatic as he thinks fit

... of the petition the Magistrate considers it and ... personally see and examine the alleged ... if he considers such a course advisable or

* Substituted by Act V of 1926

8 Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the enquiry

Detention of alleged lunatic pending enquiry

9 The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit

Consideration of petition

10 (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the enquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise, as he thinks fit

Order

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order

Notes—When a petition is dismissed the judicial authority delivers to the petitioner a statement of his reason for dismissing the same *Halsbury* Vol 19, p 530

11 No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

Further provisions as to reception orders on petition

(*a*) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(*b*) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic

11A * (1) The Magistrate may, subject to the provisions of this section, by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made to any other person who is willing to undertake the same, and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose petition the reception order was made, and all references in this Act to such last mentioned person shall be construed accordingly

Power to appoint substitute for the person upon whose application a reception order has been made

Provided that no such order of substitution shall release the person upon whose petition the reception order was made, or, if he is dead his legal representative from any liability incurred before the order of substitution was made

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate, notice should be given, the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered

(3) On such date or any subsequent date to which the proceedings may be adjourned the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any of such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution

* Inserted by Act V of 1926

—' ose petition the reception order was made and in the opinion of the Magistrate, onsibilities under this Act of such first .. ll make such an order

• • ection any question arises as to the person to whom the duties and responsibilities under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give a preference to the person who is the nearest relative of the lunatic, unless for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interest of the lunatic

(5) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit

(6) Any notice under sub section (2) may be sent by post to the last known address of the person for wh m it is intended

Reception order in case of lunatics from foreign States in India

11 B * (1) When an arrangement has been made with any foreign European State with respect to the reception of lunatics General e *Gazette* s may be made under this Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the province or provinces within which such reception orders may be made

(2) On publication of a notification under sub section (1), the provisions of this Act as to the making of reception orders on petition and for temporary '' e case of such lunatics, with the

may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides as may by general or special order be approved by the Local Government in this behalf

(*b*) the functions of the Magistrate shall be performed by such officer as the Local Government may by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate *having jurisdiction* over the alleged lunatic for all the purposes of the said provisions

(*c*) for the purposes of sections 5 and 18 (1), the expressions "medical officer and 'medical practitioner' shall include such person or class of persons as the Local Government may specify in this behalf,

(*d*) the Magistrate may in his discretion extend the period prescribed by section 19 within which the alleged lunatic must have been medically examined, and

(*e*) sections 6 (1), (2) (3), 11 11A and 34 of the Act shall not apply, and wit or adaptations as the Gover or General in *zette of India* direct for the purpose of provisions

(3) A reception order made under this section shall be deemed to be a reception order made under section 7 or section 10, as the case may be

Reception orders otherwise than on petition

Reception order in case of lunatic soldier

12 When any European who is subject to the provisions of the Army Act † 'the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934'‡ "the Air Force Act or the Indian Air Force Act

* Section 11 B has been added by Act XII of 1916

† 44 & 45 Vict c 58

‡ Inserted by Act 35 of 1934

193." * has been declared a lunatic in accordance with the provisions of the military "naval" † "or air force * regulations in force for the time being and it appears to any administrative medical officer that he should be removed to an asylum such administrative medical officer may if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any asylum which has been duly authorized for the purpose by the Governor General in Council

Notes —This section authorises the administrative medical officer to make a reception order in cases of lunatic soldier

Powers and duties of police in respect of wandering or dangerous lunatics and lunatics cruelly treated or not under proper care and control

13 (1) Every officer in charge of a police station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy Any person so arrested shall be

[illegible]

has reason to believe that be a lunatic and is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate

Notes – There was no such power under Act 36 of 1858, 9 C 341=9 I A 152 P C

Reception order in case of wandering and dangerous lunatics

14 Whenever any person is brought before a Magistrate under the provisions of sub section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceedings further, shall cause him to be examined by a medical officer, and may make such other inquiries as he thinks fit, and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person, gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum

Provided that if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, [illegible] tion order for the [illegible] the engagement [illegible] atic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate instead of making a reception order, may if he thinks fit make him over to the care of [illegible]

[illegible] different headings with two [illegible] order passed by a District [illegible] not form the subject matter [illegible] High Court the power to [illegible] s Patent or in the exercise [illegible] himself aggrieved by an [illegible] his section may apply under Part III of the Act for a regular inquisition conducted by a Judicial Officer The result of such inquisition is conclusive and over rides and over rules any order which may have been passed summarily by the executive authority 71 Ind Cas 695=4 Lah [illegible] A person who is not under control is a person wandering at large *Morris v Atkins* (1891) 18 [illegible] L R 6[illegible]8

* Substituted by Act XIV of 193[illegible]
† Inserted by Act 35 of 1934

15 (1) If it appears to the Magistrate on the report of a police officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him

Order in case of lunatic cruelly treated or not under proper care and control

(2) if such relative or other person is legally bound to maintain the alleged lunatic the Magistrate may make an order for such alleged lunatic, being properly cared for and treated, and if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14 and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum

Notes—This section corresponds to section 13 of the British Luancy Act, 1890 (53 & 54 Vict C 5)

16 (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15, the Magistrate may, by an order in writing authorize the detention of the alleged lunatic, in suitable custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical ... whether such alleged lunatic is a person in respect of whom

Detention of alleged lunatic pending report by medical officer

... for the same purpose by order in writing authorize such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary

... ice with the provisions ... from the date on which

17 All acts which the Magistrate is authorized or required to do by sections 14, 15 or 16 may be done in the Presidency towns or Rangoon by the Commissioner of Police and all duties which an officer in charge of a police station is authorized or required to perform may be performed in any of the Presidency towns by an officer of the police force not below the rank of an inspector

Commissioner of Police etc, to act in the Presidency town

Further provisions as to reception orders and medical certificates

18 (1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed

Medical certificates

(2) Every medical certificate shall state the facts upon which the person ... ingui ... and no ... upon

... dence of the ... been formed ... ppearing had

Notes —It is not obligatory on the medical practitioner to examine the lunatic in the presence of the Magistrate *R N Whitefield* (1884) 13 Q B D 122 C A

Time and manner of medical examination of lunatic

19. (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases, not more than seven clear days before the date of the order

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other

Notes —Each of the medical practitioners must examine the alleged lunatic separately from the other and each must sign a separate certificate *Vide* Ss 13(3) and 29 (2) of the British Lunacy Act, 1890

Authority for reception.

20. A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorized by him, or in the case of an order not made upon petition, for the person authorized so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention, therein, or in any asylum to which he may be removed in accordance with the provisions of this Act and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order

"Provided that no reception order shall continue to have effect—

(*a*) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(*b*) after the discharge, under the provisions, of this Act of the lunatic from such place or from any asylum to which he may have been removed "*

Notes —This section corresponds to section 35 (1) and 36 (3) of the British Lunacy Act, 1890

Copy of reception order to be sent to person in charge of asylum

21 Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted

Restriction as to asylums into which reception orders may direct admission

22 Subject to the provisions of section 85, no Magistrate shall make a reception order for the admission of any lunatic into any asylum established by Government outside the Province in which the Magistrate exercises jurisdiction

Detention of lunatics pending removal to asylum

Detention of lunatics pending removal to asylum.

23 When any reception order has been made under sections 7, 10, 14 or 15, the Magistrate may for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit

Reception and detention of criminal lunatics

Reception and detention criminal lunatics

24 An order under [illegible] de of Criminal [illegible] ion 30 of the [illegible] section 130A [illegible] directing the

* The words within quotations have been inserted by Act 32 of 1923.
† Inserted by Act 33 of 1923

reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred

Reception after inquisition

Reception after inquisition

25 A lunatic so found by inquisition may be admitted into an asylum,—

(1) in the case of an inquisition under Chapter IV, on an order made by, or under the authority of the High Court,

(2) in the case of an inquisition under Chapter V, on an order made by the District Court

Order for payment of cost of maintenance of lunatic

26 (1) When any lunatic has been admitted into an asylum in accordance with the provisions of section 25, the High Court or the District Court, as the case may be, shall on the application of the person in charge of the asylum make an order for the payment of the cost of maintenance of the lunatic in the asylum and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost the Court shall certify the same instead of making such order for the payment of the cost as aforesaid

(2) An order under sub section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property of person therein mentioned

Amendment of order or certificate

Amendment of order or certificate

27 If after the reception of any lunatic into any asylum on a reception order it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum one of whom shall be a medical officer

Notes —This section corresponds to s 34 of the British Lunacy Act 1890 see also *Lowe* v *Fox* (1887) 36 W R 25 H L

CHAPTER III

Care and Treatment

Visitors

Appointment of visitors

28 (1) The Local Government shall appoint for every asylum not less than three visitors one of whom at least shall be a medical officer

(2) The Inspector General of Prisons (where such office exists) shall be a visitor *ex officio* of all the asylums within the limits of his jurisdiction

Monthly inspection by visitors

29 Two or more of the visitors one of whom shall be a medical officer, shall once at least in every month together inspect every part of the asylum of which they are visitors and see and examine as far as circumstances will permit every lunatic and boarder therein and the order and certificate for the admission of every lunatic admitted since the last visitation

of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof

Notes—In England visitors in lunacy commonly referred to as Chancery visitors' discharge amongst other functions the duty of visiting lunatics so found by inquisition and also persons not so found but with reference to whom proceedings have been taken in lunacy *Halsbury's Laws of England*, Vol 19 p 467

Inspection of criminal lunatics by Inspector General or visitors

30 (1) When any person is "detained"* under the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898† "or under the provisions of section 103A of the Indian Army Act, 1911"‡ the Inspector General of Prisons, if such person is "detained"* in a jail or the visitors of the asylum or any two of them, if he is 'detained"* in an asylum may visit him in order to ascertain his state of mind, and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid, and such Inspector General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is 'detained *

(2) The Local Government may empower the officer in charge of the jail in which such person may be "detained * to discharge all or any of the functions of the Inspector General under sub section (1)

Discharge of lunatics

Order of discharge from asylum by visitors

31 (1) Three of the visitors of any asylum of whom one shall be a medical officer, may, by order in writing, direct that discharge of any person detained in such asylum, and such person shall thereupon be discharged

Provided that no order under this sub section shall be made in the case of a person detained under a reception order under section 12, or, in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1900

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority

Notes—In England any three visitors of an asylum may discharge any person detained therein whether recovered or not and any two visitors on the written advice of the medical officer, may discharge any person detained therein If after two visits made at an interval of not less than seven days by two visitors (one being a medical practitioner) to a licensed house it appears to them that any patient is detained without sufficient cause, they may make an order for his discharge—*Halsbury's Laws of England*, Vol 19 p 523

Discharge of lunatics in other cases and of European military lunatics

32 (1) A lunatic detained in an asylum under a reception order, made on the petition shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum

Provided that no lunatic shall be discharged under the provisions of sub section (1) if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large

(2) A person detained in an asylum under a reception order made under section 12 shall be detained therein until he is discharged therefrom in accord

* The word within quotations has been substituted by Act 11 of 1923
† Act V of 1898
‡ The words within quotations have been inserted by Act 33 of 1923

ance with the military "naval '* "or air force' † regulations in force for the time being, or until the officer making the order applies for his transfer to the military, "naval' * ' or air force' † authorities in view to his removal to England

(3) Whenever it appears to the officers in charge of an asylum that the discharge of a person therein detained under an order made under section 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the General or other Officer Commanding the division, district, brigade, or force, or other officer authorized to order the admission of such persons into an asylum, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the military "naval * "or air force"† regulations in force for the time being

Order of discharge on undertaking of relative for due care of the lunatic

33 When any relative or friend of a lunatic detained in any asylum under the provisions of section 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody, he may make an application to the authority, under whose order the lunatic is detained and such authority, if it thinks fit in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged

Notes —This section corresponds to the British Lunacy Act, 1890 (53 & 54 Vict c 5) s 79

Discharge of person subsequently found on inquisition not to be of unsound mind

34. If any lunatic detained in any asylum on a reception order made under sections 7, 10, 14, 15, or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding discharge the alleged lunatic from the asylum

Notes—This section corresponds to the British Lunacy Act, 1890, s 78

Removal of lunatics

Removal of lunatics and criminal lunatics

35 (1) "Any lunatic may in accordance with any general or special order of the Local Government, be removed from any asylum established by Government to any other asylum within the province, or to any other asylum in any other province, with the consent of the Local Government of that province ' ‡

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provision of this sub section until notice of such intended removal has been given to the petitioner

(2) The ' Local Government '‡ may make such general or special order as "it ‡ thinks fit directing the removal of any person for whose ' detention"§ an order has been made under section 466 or section 471 of the Code of Criminal Procedure, 1898 ' or under section 103A of the Indian Army Act 1911 '‖ from the place where he is for the time being "detained § to any asylum jail or other place of safe custody ' in the province or to any asylum, jail or other place of safety in any other province with the consent of the Local Government of that province ' ‡

* Inserted by Act 35 of 1934 † Inserted by Act 10 of 1927
‡ The words within quotations have been substituted by Act 38 of 1920
§ The words within quotations have been inserted by Act 11 of 1923
‖ The words within quotations have been substituted by Act 33 of 1923

Escape and re capture

Order to justify detention and re capture after escape

36 Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorized by law, and in case of escape may, by virtue of such order, be retaken by any police officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said person in charge, and conveyed to and received and detained in such asylum

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to retake such escaped lunatic under this section shall be exercisable only for a period of one month from the date of his escape

Notes—This section corresponds to section 85 of the English Lunacy Act, 1890 (53 & 54 Vict c 5) The retaking is justified under an order and certificate in proper form although the person named therein is not in fact a lunatic *Norris v Seed*, (1849) 3 Exch 782—*Halsbury* Vol 19 p 525

PART III.

JUDICIAL INQUISITION AS TO LUNACY

CHAPTER IV.

Proceedings in Lunacy in Presidency Towns

Inquisitions

Jurisdiction in lunacy in Presidency towns

37 The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay

Notes—The Calcutta, Madras and the Bombay High Courts have jurisdiction in the r original sides to decide matters as regards lunacy

Court may order inquisition as to persons alleged to be insane

38 (1) The Court may upon application by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be lunatic is of unsound mind and incapable of managing himself and his affairs

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper

Notes—Where an alien lunatic, residing temporarily has property within its jurisdiction, the original side of the High Court concerned can exercise its jurisdiction *Re Bariatinski*, 1 Ph 375, *Re Sotto Mator*, 1847, 9 C App 677, *Re Barbridge* (1902) 1 Ch 426 C A But where an alien lunatic has both residence and domicile abroad the Court has no jurisdiction. *Re Bariatinski*, 1 Ph 275, but see *Re Soltykoff*, (1898) W N 77 C A, see also 32 C L J 314 Calcutta High Court (Original Side) has no jurisdiction to hold inquisition and appoint guardian of alleged lunatic not residing in Calcutta 35 C W N 1045=58 C 919=A I R 1932 Cal 91 The Court must make a finding of both unsoundness of mind and incapacity to manage his affairs are present 67 M L J 797=40 L W 710=1934 M W N 1250

Application by whom to be made

39 Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate General

Notes.—Application should be made by the lunatic's nearest relation *Ex parte Persee*, (1828) 1 Mol 220 Order dismissing petition to adjudge person to be lunatic is not judgment 35 Bom L R 38=57 B 371=A I R 1933 Bom 112

Notice of time and place of inquisition

40 (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition

(2) If it appears that personal service on the alleged lunatic would be ineffectual the Court may direct such substituted service of the notice as it thinks fit

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given

Notes —Where the husband and wife of the applicant is not an applicant, i e or she should be served with a notice of such application *Re Pe im* 2 Coop, temp Cott 163

Powers of Court in respect of attendance and examination of lunatic

41 (1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic

(2) The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of personal examination

Notes —The Court may act under clause (2) for the convenience of the alleged lunatic *Ex parte Smith*, 1 Swan 4 see also (1891) 3 Ch 274 Where he is outside the jurisdiction of the Court his attendance may be dispensed with *Re Lanwarne* (1882) 46 L T 668 It is the duty of the Judge before ordering an inquisition with respect to an alleged lunatic to personally examine the alleged lunatic if so required with a view to determine whether there is any need for holding an inquisition 28 C W N 513=51 C 480=80 Ind Cas 798

Rules respecting attendance and examination of females alleged to be lunatic

42 The attendance and examination of the alleged lunatic under the provisions of section 41 shall if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public be regulated by the law and practice for the examination of such persons in other civil cases

Power to direct District Court to make inquisition in certain cases

43 (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be and such District Court shall accordingly proceed to make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed

Amendment of finding of District Court if defective or insufficient in form

44 If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form it may either amend the same or refer it back to the Court which made the inquisition to be amended

Proceedings on finding of Court

45 The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the

provisions of section 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the es ate of the lunatic as the findings referred to in section 12 of the Lunacy (Supreme Courts) Act* 1858, immediately before the commencement of this Act

Notes —Court has no power to grant costs to unsuccessful applicant out of the estate of the alleged lunatic 40 L W 710=67 M L J 797 Where there is no provision for survivorship in the order of appointment of two joint managers of the estate of a lunatic (which provision is made only in very special cases) the office of the survivor terminates on the death of his co managers 38 C W N 1054=61 C 986=60 C L J, 14

Judicial powers over person and estate of lunatic

Custody of lunatics and management of their estates

46 (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic

[illegible] of the British Lunacy Act, 1890 [illegible] lunatic so found by inquisition' or administration of his estate [illegible] *ttlement* (1908) 1 Ch 201 [illegible] persons jointly is unusual and 635, *Halsbury* vol 19, p 424

Powers of manager in respect of management of lunatics estate

47 The Court, on the appointment of a manager of the estate of a lunatic, may direct by the order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether movable or immovable, of which the estate may consist

Provided that no manager so appointed shall without the permission of the Court—

(*a*) mortgage charge or transfer by sale, gift exchange or otherwise any immovable property of the lunatic or

(*b*) lease any such property for a term exceeding five years

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose

Notes —A manager cannot without the leave of the Court alienate the lunatic's property This section corresponds to section 29 of the Guardians and Wards Act As regards the powers of a guardian of property appointed by a Court *Vide* 61 P R 1918, 23 A 288, 23 C W N 634 44 Ind Cas 554, 19 B 96 A lease not exceeding five years can be granted 54 Ind Cas 19 In the application the real price of the property should be stated 46 Ind Cas 542

Power to make order concerning any matter connected with the lunacy

48 The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his estate make such order subject to the provisions of this Chapter, respecting the application, as in the circumstances, it thinks fit

Notes —It seems that this section contemplates an order of revocation of an order declaring a person a lunatic

* Repealed by the Indian Lunacy Act 4 of 1912

Management and administration

Power to dispose of lunatic s property for certain purposes

49. The Court may, if it appears to be just or for the lunatic's benefit, order that any property, movable or immovable, of the lunatic, and whether in possession, reversion remainder, or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely—

(1) the payment of the lunatic s debts or engagements

(2) the discharge of any incumbrance on his property

(3) the payment of any debt or expenditure incurred , for the lunatic's maintenance or otherwise for his benefit ,

(4) The payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto ,

(5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court

Execution of conveyances and powers by manager under order of Court

50 (1) The manager of the lunatic s estate shall, in the name and on behalf of the lunatic execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order

(2) Such manager shall in the like manner, under the order of the Court, exercise all powers whatsoever vested in a lunatic whether the same are vested in him for his own benefit or in the character of trustee or guardian

Notes —A sale of lunatic s property by the manager *without the order or* knowledge of the Court is void and could not be ratified 1 Lah 109=55 Ind Cas 865

Court may order performance of contract

51 Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper

Notes —This section corresponds to s 120 (1) of the English Lunacy Act

Dissolution and disposal of property of partnership on a member becoming lunatic

52 (1) Where a person being a member of a partnership firm is found to be a lunatic the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same dissolve the partnership

(2) Upon such dissolution or upon a dissolution by decree of Court or otherwise by due course of law the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms and shall do all such acts for carrying into effect the dissolution of the partnership as the Court shall think proper

Disposal of business premises

53. Where a lunatic has been engaged in business, the Court may, if it appears to be for the lunatic s benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the money arising from such sale shall be applied in such manner as the Court may direct

54 Where a lunatic is entitled to a lease or under lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager of the estate may, by order of the Court, surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms as the Court thinks fit.

Manager may dispose of lease

Notes —This section corresponds to s 120 (f) of the English Lunacy Act, 1890 (53 & 54 Vict c 5) See also *Exparte Jormyn* (1788), 3 Swan 131 (n)

55 If a lunatic is possessed of any immovable property situate beyond the local limits of the jurisdiction of the Court which, by the law in force in the Province wherein such property is situated subjects the proprietor, if disqualified to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management

Assumption of charge by Court of Wards of land belonging to a lunatic in certain cases

Provided that—

(1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the immovable property whichs o subjects the proprietor as aforesaid

(2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct.

(3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as relates to the management of the said immovable property which so subjects the proprietor as aforesaid) the powers given by any other section

56 (1) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid

Power to apply property for lunatic's maintenance without appointing manager in certain cases

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person

Vesting orders.

57 Where any stock or Government securities or any share in a company (transferable within British India or the dividends of which are payable there) is or are standing in the name of or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him and the manager dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same and to receive and pay over the dividends in such manner as the Court directs

Power to order transfer of stock belonging to lunatic, in certain cases

58 Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of British India and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing may order some fit person to make such transfer of the stock secureties or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit

Power to order transfer of stock of lunatic residing out of British India and the United Kingdom

General

59 If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance the Court may in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid

Power to apply property for lunatic's maintenance in case of temporary lunacy

60 (1) When any person has been found under this Chapter to be of unsound mind and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit

61 The Court may, from time to time make rules for the purposes of carrying into effect the provisions of this Chapter in matters of lunacy

Power of Court to make rules

Notes —This section and the rules framed thereunder are applicable only to cases in the Presidency Towns and in the absence of rules applicable to cases outside the Presidency Towns these rules can be made applicable to such cases also 22 C W N 547=27 C L J 205=43 Ind Cas 511

CHAPTER V

PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY TOWNS

Inquisition

62 Whenever any person not subject to the jurisdiction of any of the Courts mentioned in section 37 is possessed of property and is alleged to be a lunatic, the Dis [illegible] such person [illegible] order direct [illegible] s of unsound

Power of District Court to [illegible]

Notes —A brother's wife who is a relative under 3 (11) can apply for inquisition under this section 22 C W N 547=27 C L J 205=43 Ind Cas 511 Section 191 of the C P Code is applicable to proceedings under the Lunacy Act and consequently a District Judge is competent to take proceedings on the basis of an applica

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conclusion on its personal observation alone but the procedure provided in this section should be followed 96 Ind Cas 303=8 Lah L J 391 An inquisition can
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directing an inquisition into a
ich an order is intended by the
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836=46 C L J 197=A I R 1927 Cal 636 Application for inquisition can be entertained by Court within jurisdiction alleged where lunatic ordinarily resided in and had his property 35 C W N 543=A I R 1931 Cal 711.

Application by whom to be made

63. (1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841 (hereinafter referred to as the curator) or by the Government Pleader as defined in the Code of Civil Procedure, 1908, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the District in which it is situate.

(2) If the property or any part thereof is of such a description that it would by the law in force in any Province where such property is situate subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards

Notes—The term 'Curator" means Curator appointed under the Succession Property Protection Act 146 Ind Cas 553=A I R 1933 Lah 626

Regulation of proceedings of District Courts

64 The provisions of sections 40, 41 and 42 shall regulate the proceedings of the District Court with regard to the matters to which they relate

Inquisition by District Court and finding thereon

65 (1) The District Court, if it thinks fit may appoint two or more persons to act as assessors to the Court in the said inquisition

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others

Notes— Judge has no right
or jurisdictic For ascertaining
whether a p can also appoint
commissione ticular issue but he
must retain the judicial function in his own person 43 A 459=9 A L J 334=62 Ind Cas 430 Under this Act what the Courts have to decide is whether the person before them is of unsound mind and is incapable of managing himself and affairs and under this section it is open to the Court to find that a man is of unsound mind so as to be incapable of managing himself and is not dangerous to himself or to

others 90 Ind Cas 878=30 C W N 180 Where the lunatic was himself a party to proceedings in the trial Court under the Lunacy Act, he can appeal without a next friend against any adverse order A L R 1934 Nag 2=A I R 1934 Nag 27 An order in lunacy not a judgment which is conclusive against the ward as one of the judgments mentioned in section 41 of the Evidence Act 56 M 904=1933 M W N 514=58 L W 135=A I R 1933 Mad 624=65 M L J 279 Under s 65 there must be a finding that the alleged lunatic is of unsound mind and is not capable of managing his affairs himself 30 N L R 224=A I R 1934 Nag 27, see also 67 M L J 797=1934 M W N 1259

Inquisition by subordinate Court on commission issued by District Court and proceedings thereon

66 (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a commission to any subordinate Court to make the inquisition, and such subordinate Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter

(2) On the completion of the inquisition the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors if assessors have been appointed, and its own opinion on the case, and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65, sub section (2)

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application

Judicial powers over person and estate of lunatic.

Custody of lunatics and management of their estates

67 (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenannce but it shall not be necessary to make any order as to the custody of the person of the lunatic

Court of Wards to be authorised in certain cases to take charge of estate of lunatic

68 If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force [illegible] disqualified, to [illegible] Vards, the Court [illegible] take charge of the same

Power to direct Collector to take charge of person and estate of lunatic in certain cases

69 (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic

Provided that no such order shall be made without the consent of the Collector previously obtained

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

Control over proceedings of Collector

70 All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the Local Government or of such authority as it may appoint in this behalf

Power of District Court to appoint guardian and manager and take security from manager

71 (1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person,

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under sections 56 and 59

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

Notes—The appointed guardian of the person of the lunatic is entitled to the custody of the lunatic 67 M L J 661=40 L W 712

Restriction on appointment of legal heir of lunatic to be guardian of his person

72 The legal heirs of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing considers that such an appointment is for the benefit of the lunatic

Notes—This section does not apply where near relatives only can be appointed guardians of lunatic 85 Ind Cas 278=A I R 1925 Oudh 942 The Court must be careful in appointing legal heirs of the lunatic as the guardian of the lunatic A I R 1934 Rang 164=152 Ind Cas 512

Remuneration of managers and guardians

73 A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties

Duties of guardians

74 (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance

Powers of manager

75 (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic

Provided that no manager so appointed shall without the permission of the Court—

(*a*) mortgage, charge, or transfer by sale, gift, exchange or otherwise any immovable property of the lunatic,

(*b*) lease any such property for a term exceeding five years

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic

Manager to furnish inventory and annual accounts.

76 (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six m[illegible] from the date of his appointment, deliver

case may be, an inventory of the immovable property belonging to the lunatic and of all such money, or other movable property, as he may receive on account of the estate, together with the statement of all debts due by or to the same

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands

Proceeding if accuracy of inventory or accounts is impugned

77 If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit, or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector

Payment into public treasury and investment of proceeds of estate

78 All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate shall be paid into the public treasury on account of the estate, and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trust Act, 1882*, unless the Court or the Collector, as the case may be for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

Relative may sue for an account

79 Any relative of the lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate

Removal of managers and guardians

80 (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him

(2) The Court may also for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him, and may appoint any other fit person in place of such manager or guardian, and the District Court, on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him

Notes—The District Court has no power under Chapter V of the Act, to alienate any portion of the lunatic's property where a manager of the lunatic's estate has been appointed and has not been removed under this section 8 P R 1919=52 Ind Cas 609

Penalty on manager for refusing to deliver accounts or property

81 The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realize such fine

* Act II of 1882

as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such account or property

Notes —Even though the fine imposed on the guardian of a lunatic under s 81 Lunacy Act, for his contumacious conduct can be recovered as if it were due under a decree of the Court; yet it is doubtful whether the order imposing the fine can be said to have the force of a decree within the meaning of Art 2 Sch 2 Court Fees Act A I R 1934 Lah 853=36 P L R 172=150 Ind Cas 664

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased

82 (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs

The inquiry shall, as far as may be be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit

Notes —Where material is placed before Judge to show that a lunatic has come to his normal soundness of mind the Judge should proceed with the inquiry prescribed by law irrespective of the fact that certain proceedings were pending in Court relating to his rights if he was a lunatic 88 Ind Cas 580=A I R 1925 Lah 533

Appeals

83 An appeal shall lie to the High Court from any order made by a District Court, under this Chapter

Notes —Power to order custody of person of lunatic to the guardian appointed lies by implication in the Court which appoints the guardian, even though there is no express provision in the Act Such an order is appealable under s 83 A I R 1934 Mad 724=40 L W 712=67 M L J 661

PART IV.

MISCELLANEOUS

CHAPTER VI

ESTABLISHMENT OF ASYLUMS

Local Government may establish or license the establishment of asylums

84 The Local Government may establish or license the establishment of asylums at such places as it thinks fit "if it is satisfied that provision has been and will be made for the curative treatment therein of persons suffering from mental diseases"*

Power to cancel license if provision for curative treatment is sufficient

'84A † If in any licensed asylum no provision for curative treatment has been made, or the Local Government considers that the provision made is insufficient, the Local Government may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the Local Government may revoke the license '

* The words within quotations have been inserted by Act 6 of 1922
† Section 84A has been inserted by Act 6 of 1922

85 "The Magistrates or Courts exercising jurisdiction in any province may send lunatics or any class of lunatics to any asylum situate in any other province in accordance with any general or special order of the Local Government made in that behalf with the consent of the Local Government of such other province *

Provisions for admission of lunatics in asylums outside a province

CHAPTER VII

Expenses of Lunatics

86 (1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum

Payment of cost of maintenance in licensed asylums in certain cases by Government

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under section 12

87 Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any movable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied

Application of property in the possession of a lunatic found wandering

88 If a lunatic detained in an asylum on a reception order made under section 14, section 15 or section 17 has an estate applicable to his maintenance or if any person legally bound to maintain such lunatic has the means to maintain him the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic

Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate or by person bound to maintain him

Notes —It is sufficient to invite the application of this section if the father as the manager of a joint Hindu family is liable to maintain his son as a member thereof In that case he is a person legally bound to maintain the lunatic within the meaning of this section 51 B 120

89 (1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means • make an order for the recovery of the cost of ether with the costs of the application out of

Order of Court and enforcement thereof

(2) Such order shall be enforced n the same force and effect and subject said Court in a suit in respect of the

* Section 85 has been substituted by Act 38 of 1920

Notes—Under this section the Court has to determine whether the father has means to maintain the son 51 B 129=29 Bom L R 62=100 Ind Cas 575=A. I. R 1927 Bom 91.

Fixation of cost of maintenance

"89A* The Governor General in Council may, by general or special order, prescribe the amount payable to account of the cost of maintenance of lunatics detained in any asylum for the cost of whose maintenance any Local Government is liable, and the proportions in which such amount shall be payable respectively by the Local Governments so liable Any such amount may include charges on account of the upkeep of the asylum and of the capital cost of the establishment of the asylum."

Incidence of the costs of maintenance payabe by Government.

89B (1) *"When under the provisions of this Act the cost of the maintenance of a lunatic is payable by the Government, then such cost shall be payable:—

(a) in the case of a lunatic not domiciled in British India, by the Local Government of the province in which the reception order or the order under section 25, as the case may be, was made, and

(b) in the case of a lunatic domiciled in British India, by the Local Government of the Province in which the lunatic has last resided for a period of five years before the reception order or the order under section 25, as the case may be, was made, or, if the lunatic has not been resident in any one province for such period, by the Local Government of the province in which such order was made

(2) If any question arises as to the incidence of the cost of maintenance of any lunatic under sub section (1), the question shall be referred to the Governor General in Council and his decision thereon shall be final"

Saving of liability of relatives to maintain lunatic

90 The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

CHAPTER VIII.

RULES

Power of Local Government to makes rules

91. (1) The Local Government may make rules for all or any of the following purposes, namely:—

(a) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court which is or may hereafter be established under the Indian High Courts Acts, 1861 to 1911,

(b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16;

(c) to regulate the "detention",† care, treatment and discharge of criminal lunatics;

(d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another,

(e) to regulate the transfer of criminal lunatics to asylums,

(f) to prescribe the procedure to be followed by District Courts and Magistrate ... ished by Government

(g) ... ie

province t ...

(h) ...

(i) s ... ct

the provisions of the Act

* Added by Act VI of 1922

† The word within quotations has been substituted by Act XI of 1923

(2) In making any rule under this section, the Local Governments may direct that a breach of it shall be punishable with fine which may extend to fifty rupees

92 All rules made under section 91 shall be published in the local official Gazette, and shall thereupon have effect as if enacted in this Act

Publication of rules

CHAPTER IX

Supplemental Provisions

93 Any person who—

Penalty for improper reception or detention of lunatic

(a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or

(b) for gain detains two or more lunatics in any place not being an asylum, shall be punishable with imprisonment which may extend to two years or with fine or with both

94 The provisions of Chapter XLII of the Code of Criminal Procedure, 1898*, shall, so far as may be, apply to bonds taken under this Act

Provisions as to bonds

95. (1) When any sum is payable in respect of pay pension, gratuity or other similar allowance to any person by Government and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such such sum would be payable if the payee were not a lunatic, may pay so much of the said sum as he thinks fit to

Pension of a lunatic payable by Government

96 Subject to any rule, the forms set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned and if used shall be sufficient

Use of forms in Schedule

97 No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act

Protection to persons acting under Act

98 Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of British India in the exercise of jurisdiction conferred by His Majesty or the Governor General in Council

Power to give effect to warrants and orders of certain Courts outside British India

99 The Local Government† may make rules regulating the procedure for the reception and detention in asylums in "the province"† of lunatics whose reception and detention are provided for by section 98

Power to make rules for reception of lunatics received from outside British India

* Act V of 1898

† Substituted by Act 38 of 1920

100 (1) In the case of orders made before the commencement of this Act under section 7 of the Indian Lunatic Asylums Act, 1858*, for the reception of persons into an asylum, he persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the Indian Lunatic Asylums Act, 1858,* before the commencement of this Act as if the order had been made after the commencement of this Act upon a petition presented by him

Orders under repealed Act

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf

101 *Repealed by Act XVII of 1914*

SCHEDULE I

FORMS

(*See section 96*)

FORM 1

(*Application for Reception Order, See sections 5 and 6*).

In the matter of A B †, residing at , by occupation son of

[*or* District Magistrate of
Magistrate specially empowered under

The petition of C D † residing at , by occupation , son of , in the town of [*or* sub division of in the district of]

1 I am ‡ years of age

2 I desire to obtain an order for the reception of A B as a lunatic in the asylum of situate at §

3. I last saw the said A B at on the ‖ day of

4 I am the ¶ of the said A B

[*Or if the petitioner is not a relative of the patient state as follows*]

I am not a relative of the said A B The reasons why this petition is not presented by a relative are as follows : [*State them*]

The circumstances under which this petition is presented by me are as follows : [*State them*]

5 The persons signing the medical certificates which accompany the petition are **

6 A statement of particulars relating to the said A B accompanies this petition

7 [*If that is the fact*] An application for an inquiry into the mental capacity of the said A B was made to the on the and a certified

* Act XXXVI of 1858

† Full name, caste and titles

‡ Enter the number of completed years The petitioner must be at least eighteen or twenty one whichever is the age of majority under the law to which the petitioner is subject

§ Insert full description of the name and locality of the asylum or the name, address and description of the person in charge of the asylum

‖ A day within 14 days before the date of the presentation of the petition is requisite

¶ Here state the relationship with the patient

** Here state whether either of the persons signing the medical certificate is a relative, partner or assistant of the lunatic or of the petitioner and if a relative of either, the exact relationship

copy of the order made on the said petition is annexed hereto

[Or if that is the fact]

No application for an inquiry into the mental capacity of the said A B has been made previous to this application

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement

(Sd) C D

The statements contained or referred to in paragraphs are true to my knowledge; the other statements are true to my information and belief

(Sd) C D

Dated

Statement of particulars

[If any of the particulars in this statement is not known, the fact to be so stated]

The following is a statement of particulars relating to the said A B.

Name of patient at length

Sex and age

Married single or widowed

[illegible]

nown

to the date hereof

tient who are alive

Age (if known) on first attack

When and where previously under care and treatment as a lunatic

Duration of existing attack

Supposed cause

Whether the patient is subject to epilepsy

Whether suicidal

Whether the patient is known to be suffering from phthisis or any form of tubercular disease

Whether dangerous to others and in what way

Whether any near relative (stating the relationship) has been afflicted with insanity

Whether the patient is addicted to alcohol, or the use of opium, ganja, charas, bhang, cocaine or other intoxicant

[The statements contained or referred to in paras, are true to my knowledge The other statements are true to my information and belief]

[Signature by person Making the statement]

FORM 2

Reception order on Petition

(See sections 7, 10)

I the undersi[illegible] rate of [*or* the District Magistra[illegible] Magistrate of *or* a Magistrate of th[illegible] overnment to perform the functions of a [illegible] n the petition of C D of* in the matter of A B, a lunatic, accompanied by the medical certificates [illegible] tioner [*or* medical officer] to receive the said A B personally seen the said

(Sd) E F.

(Designation as above)

To†

FORM 3

Medical Certificate

(See sections 18, 19)

In the matter of A B of ‡ in the town of [*or* the sub division of in the district of] an alleged lunatic

I, the undersigned C D, do hereby certify as follows :—

---

* Address and description

† To be addressed to the officer or person in charge of the asylum

‡ Insert residence of patient

... er declared by Govern
... it to be medical practi-
... I am in the actual prac-
tice of the medical profession

2. On the day of 19 at† in the $\frac{\text{town}}{\text{village}}$ or [or the sub division of in the district of]

[Separately from any other practitioner]‡, I personally examined the said A B, and come to the conclusion that the said A B is a lunatic and a proper person to be taken charge of and de...ned under care and t...ment

... d to me by

(Sd) C D
(*Designation as above*)

FORM 4

Reception order in case of Lunatic Soldier
(*See section 12*)

Whereas it appears to me that A B a European, subject to the Army Act, who has been declared a lunatic in accordance with the provisions of the military regulations, should be removed to an asylum, I do hereby authorise you to receive the said A B into your asylum

(Sd) E F
Administrative Medical Officer.

To§

FORM 5

Reception Order in case of wandering or dangerous lunatics or lunatics not under proper control or cruelly treated (sent to an asylum established by Government)
(*See sections 14, 15 17*)

I, C D, Presidency Magistrate of [or a Commissioner of Police for] [or the District Magistrate of or the Sub divisional Magistrate of or a Magistrate specially empowered by Government under the Act IV of 1912] having caused A B to be examined by E F, a Medical Officer under the Indian Lunacy Act, 1912, and being satisfied that A B [*describing him*] is a lunatic who was ... by reason of l...] [or is a lunatic not ... the person having ... rge of and detained ... A B into your asylum

(Sd) C D
(*Designation as above*)

Dated the
To the Officer in charge of the asylum at

FORM 6

Same when sent to a licensed asylum

I, C D, [*as above down to* "care and treatment" and being satisfied with the engagement entered into in writing by G H of (*here insert address and description*) who has desired that the said A B may be sent to the asylum at [*here insert description of asylum and name of the person in charge*] to pay the cost of

* Insert qualification to practise medicine and surgery registrable in the United Kingdom

† *Insert place of examination*

‡ Omit this where only one certificate is required

§ To be addressed to the person in charge of an asylum duly authorised by Government to receive lunatic Europeans subject to the Army Act

maintenace of the said A B, in the said asylum, hereby authorize you to receive the said A B into your asylum

Dated the

To the person in charge of the asylum at

(Sd) C D

(Designation as above)

FORM 7

Bond on the making over of a lunatic to the care of relative or friend

(See sections 14, 15 17)

Whereas A B son of , inhabitant of , has been brought up before C D a Presidency Magistrate for the town of [*or* Commissioner of Police for] [*or* the $\frac{\text{District}}{\text{Sub divisional}}$ Magistrate of, *or* a Magistrate of the first class specially empowered under Act IV of 1912] and is a lunatic who is believed to be dangerous [*or* deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas I E F, son of , inhabitant of , have applied to the Magistrate [*or* Commissioner of Police] that the said A B may be delivered to my care

[illegible] hereby bind myself that on the said A B being made over to [illegible] prevented from doing [illegible] therein, I hereby bind myself to forfeit to His Majesty [illegible] sum of rupees

Dated this day of 19

(Sd) E F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves [illegible] said A B being made [illegible] prevented from doing [illegible] making default therein [illegible] the King Emperor [illegible]

Dated this day of 19

(Signature)

FORM 8

Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care

(See Section 33)

Whereas A B son of , inhabitant of , is a lunatic who is now detained in the asylum at under an order made by C D, a Presidency Magistrate for the town of [*or* Commissioner of Police for] [*or* the $\frac{\text{District}}{\text{Sub divisional}}$ Magistrate of , *or* a Magistrate of the first class specially empowered under Act IV of 1912] under section 14 [*or* section 15] of Act IV of 1912 and whereas I, E F, son of , inhabitant of have applied to the said Magistrate [*or* Commissioner of Police] that the said A B may be delivered to my care and custody

I hereby bind myself that on the said A B being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others, and in case of my making default therein I hereby bind myself to forfeit to His Majesty the King Emperor of India the sum of rupees

Dated this day of 19

(Sd) E F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E F that he will, on the aforesaid A B being delivered to his care and custody, have the said A B properly taken care of and prevented from doing injury to himself or to others, and in case of the said E F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King Emperor of India, the sum of rupees

Dated this day of 19

(Signature)

SCHEDULE II

Repealed by Act XVII of 1914

THE INDIAN MAJORITY ACT, 1875

ACT NO IX OF 1875

RECEIVED THE G G s ASSENT ON THE 2ND MARCH, 1875

An Act to amend the law respecting the Age of Majority

Preamble

WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of non age and to attain more uniformity and certainty respecting the age of majority than now exists, It is hereby enacted as follows —

Short title

1 This Act may be called The Indian Majority Act, 1875

Local extent

It extends to the whole of British India and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty,

Commencement and operation

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

Notes—This Act does not apply to European British subjects temporarily residing in British India 7A 490 F B But it applies European British subjects domiciled in British India 1 B L R O C 10

Savings

2 Nothing herein contained shall affect—

act in the following matters (namely) —

s and usages of any class of Her Majesty s subjects in India, or

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him

Marriage—is excluded from the operation of this Act 6 A W N 218 46 Ind Cas 421, 22 B 430

Dower—29 Ind Cas 587, 24 M L J 49 41 M 1026 1932 A L J 781=A I R 1932 A 1058

Divorce—55 B 160=A I R 1931 Bom 76, 47 C L J 372

Adoption—Age of capacity to a Hindu to make a valid adoption is the beginning of 16 years 40 M 925=32 M L J 119 42 M L J 129, 18 C 69 43 B 481, 15 W R 551, 1 C 289 (P C)

Clause (b)—Where the father sues to enforce his paternal right to the custody and control of his minor son, it is not the Hindu Law, but Act IX of 1875 that governs the cause in regard to the age at which minority ceases, and the father's right is not taken away by this clause—9 M 391

Clause (c)—This section refers only to capacity to contract, which is limited by s 16 of the Contract Ac cedure and is limited by Hindus and Mahomedan

Vide 19 W R 110, 1 C 108, 7 A 763

Will—Under this clause, the capacity to make Wills is not safeguarded 8 A L J 385=33 A 255 So it is not competent to a Hindu who has not attained majority under the Majority Act, to dispose of his property by making Will 36 B 622, see also 38 M 166

Religious duties—The age of majority fixed by the Indian Majority Act does not apply to offices which involve the performance of religious duties 28 Ind Cas 934

3 Subject as aforesaid "every minor of whose person or property or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age"* shall, notwithstanding anything contained in the Indian Succession Act (No X of 1865) or in any other enactment be deemed ' have completed his age of twenty

Age of majority of persons domiciled in British India

n domiciled in British India shall hen he shall have completed his age of eighteen years and not before

Guardian has been appointed—In the case of a Mahomedan where a guardian has been appointed the age of majority is governed by this sect on and not ... appo nted of a minor he must be wenty one years even though the age of twenty one years W N 1887 78 21 B 281 For

granting letters of administration to a *defacto* guardian of a minor 89 P R 1906= 90 P L R 1907 See also 25 M L J 459 Once a guardian is appointed by Court minor is 32 P L

Minor under Court of Wards—Under this section the disab lity of minority continues only as long as the Court of Wards retains charge of the minor s property 17 C 844, 3 M 11

Court of Justice —Where grant of probate is made to a testamentary guardian such a guardian is not one appointed by a Court of Justice 2 C L R 577 A Collector is not a Court of Justice 10 N L R 161

Age of majority—A person under the age of 15 years is a m nor 12 A 213 This section appl es to Hindus and Mahomedans as well A W N 1867, 71, 8 A L J 385 2 W R 217 6 A W N 218 The mere fact of a guardian whose certificate is afterwards revoked havin postpone the attainment of majority one A W N 1891, 118 But see 5 333 4 C L J 112, 12 C 612 17 C 944 13 C W N 59 =29 I 672 (F B) 13 B 285, 21 B 281 If an order appointing a guardian is made and subsequently it is set as de on the ground either that it was improperly *obtained or erroneously* made and that it was an order bad *ab initio* and one that ought never to have been made, the period of minority under the provisions of this *sect on is not extended to* twenty one years 31 B 590 The *lex loci contractus* determines the capacity of person to contract and re origin 3 N W P 338 date is on the person w cannot be proved by his

4 In computing the age of any person the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3 at the beginning of the twenty first anniversary of that day and if he falls within the

Age of majority how computed

* The words quoted have been substituted for the original by the Guardians and Wards Act (VIII of 1890) s 52

second paragraph of section 3, at the beginning of the eighteenth anniversary of that day

Illustrations

(*a*) Z is born is British India on the first day of January 1850 and has a British Indian domicile A guardian of his person is appointed by a Court of Justice Z attains majority at the first moment of the first day of January, 1871

(*b*) Z is born in British India on the twenty ninth day of February, 1852, and has a British Indian domicile A guardian of his property is appointed by a Court of Justice Z attains majority at the first moment of the twenty eighth day of February, 1873

(*c*) Z is born on the first day of January, 1850 He acquires a domicile in British ... son or property by any Court of Justice, ... t of Wards Z attains majority at the

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THE MARRIAGES' VALIDATION ACT, 1892.

ACT NO II OF 1892

RECEIVED THE G G 'S ASSENT ON THE 29TH JANUARY, 1892

An Act to validate certain Marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872

WHEREAS provision is made in Part VI of the Indian Christian Marriage Act, 1872 for the solemnization of marriages between persons of whom both are Native Christians but not of marriages between persons of whom one only is a Native Christian :

And whereas persons licensed under section 9 of the said Act have in divers parts of British India through ignorance of the law permitted marriages to be solemnized in their presence under the said Part between persons of whom one is a Native Christian and the other is not a Native Christian ,

... such marriages, having been solemnized

Commencement

1 [*Repealed by Act X of* 1914]

Definition

2 In this Act the expression ' Native Christian has the same meaning as in the Indian Christian Marriage Act, 1872

Validation of irregular marriages

3 All marriages which have already been solemnized under Part VI of the Indian Christian Marriage Act, 1872, between persons of whom one only was a Native Christian, shall be as good and valid in law, as if such marriages had been solemnized between persons of whom both were Native Christians

Provided that nothing in this section shall apply to any marriage which has been judicially declared to be null and void or to any case where either of the parties has since the solemnization of such marriage, and prior to the commencement of this Act, contracted a valid marriage

Validation of records of irregular marriages

4 Certificates of marriages, which are declared by the last foregoing section to be good and valid in law, and register books and certified copies of true and duly authenticated extracts therefrom, deposited in compliance with the law for the time being in force in so far as the register books and extracts relate to such marriages as aforesaid, shall be received as

evidence of such marriages, as if such marriages had been solemnized between persons of whom both were Native Christians

5 References in this Act to the Indian Christian Marriage Act, 1872, shall, so far as may be requisite, be construed as apply ing also to the corresponding portions of the Indian Marriage Act, 1865

Application of Act to marriages under Act V of 1865

6 If any person licensed, under section 9 of the said Act, to grant certificates of marriage between Native Christians shall, at any time after the commencement of this Act, solemnize or affect to solemnize, any marriage under Part VI of the said Act or grant any such certificate as therein mentioned, knowing that one of the parties to such marriage or affected marriage was at the date of such solemnization, not a Christian he shall be liable to have his license cancelled, and, in addition thereto he shall be deemed to have been guilty of an offence prohibited by section 73 of the said Act, and shall be punishable accordingly

Penalty for solemnizing irregular marriages

MARRIED WOMEN S PROPERTY ACT, 1874

ACT NO III OF 1874

RECEIVED THE G G's ASSENT ON THE 24TH FEBRUARY, 1874

An Act to explain and amend the law relating to certain Married Women, and for other purposes.

WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurances on lives by persons married before or after that day

Preamble

And whereas by the Indian Succession Act, 1865, section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried

And whereas by force of the said Act all women to whose marriages it [illegible] nd [illegible] ty, [illegible] of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives It is hereby enacted as follows —

Scope —This act applies to persons having Indian domicile as well to those having English domicile 12 C 522 4 C 140

It is competent for married woman, to charge property settled on her without power of anticipation w th [illegible]

This Ac [illegible] 35 M 172 20 C L J 44=18 C [illegible] e it was held that ss 4 5, 7, 8 and [illegible] d applicable by s 2 But in 20 C L [illegible] extent to which Hindus Mahomeda [illegible] Buddhists are affected or excluded depends on the special clauses relating to them and not on the power given to the Governor General in Council by s 2 in regard to other communities

I — Preliminary

1 This Act may be called The Married Women's Property Act, 1874

Short title

2 It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty

Extent and application

But nothing herein contained applies to any married woman who at the time of her marriage, professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions

And the "Local Government"* may from time to time by order either retrospectively from the passing of this Act, or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions

The "Local Government"* may also revoke any such order, but not so that the revocation shall have any retrospective effect

All orders and revocations under this section shall be published in the "Local Official Gazette"†

3. [*Repealed by Act XII of 1876*]

II—Married Women's Wages and Earnings

4‡ The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

Married women's earnings to be their separate property.

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages earnings and property, shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property

III—Insurance by Wives and Husbands

5§ Any married woman may effect a policy of insurance on her own behalf and independently of her husband, and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

Married women may effect policy of insurance

6‖ (1) A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them according to the interest so expressed, and shall not so long as any object of the trust remains be subject to the control of the husband, or to his creditors, or form part of his estate.

Insurance by husband for benefit of wife

When the sum secured by the policy becomes payable, it shall unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate and shall be received and held by him upon the trusts expressed in the policy or such of them as are then existing

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court,

* The words within quotations have been substituted by Act 38 of 1920

† Certain words after this repealed by Act 39 of 1925 have been omitted

‡ Compare 33 & 34 Vict, c 93, s 1, which was repealed by 45 & 46 Vict c 75 s 22

§ Compare 33 & 34 Vict c 93 s 10, para 1

‖ Compare 33 & 34 Vict c 93 s 10 para 2

under Act No XVII of 1864 (*to constitute an Office of Official Trustee*), section 10

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors

* [(2) Notwithstanding anything contained in section 2 the provisions of sub section (1) shall apply in the case of any policy of insurance such as is referred to therein which is effected by any Hindu Muhammadan, Sikh or Jain in Madras after the thirty first day of December 1913 or in any other part of British India after the first day of April, 1923

Provided that nothing herein contained shall affect any right of liability which has accrued or been incurred under any decree of a competent Court passed before the 1st day of April 1923]

Hindus —This section does not apply to the Hindus The insurance policy of a deceased Hindu for the benefit of his wife can be attached and sold by a deceased husband's creditor 37 B 47=15 Bom L R 320 The reference to children in s 6 is incidental and is applicable only to children of persons who are governed by the rest of the Act 18 C W N 1335=20 C L J 44 But a Full Bench of the Madras High Court had held that this section is applicable to all insurance policies 25 M L J 65 (F B) See also 32 Ind Cas 991 but see 32 C W N 634 But now the point is set at rest by the enactment of sub section (2) *There is nothing in the language of s 6 to show that the words 'for the benefit of his wife', or other words corresponding to these should appear in the policy to enable the Court to infer a statutory trust in favour of wife within the meaning of the section* 55 M 171=62 M L J 111=35 L W 338=141 Ind Cas 680=A I R 1932 Mad 270

IV —Legal Proceedings by and against Married Women

Married women may take legal proceedings

7 † A married woman may maintain a suit in her own name for the recovery of property of any description which by force of the said Indian Succession Act 1865, or of this Act, is her separate property, and she shall have in her own name the same remedies both civil and criminal, against all persons for the protection and security of such property as if she were unmarried and she shall be liable to such suits processes and orders in respect of such property as she would be liable to if she were unmarried

Notes —1 C 285

Wife's liability for post nuptial debts

8 If a married woman (whether married before or after the first day of January 1866) possesses separate property and if any person enters into a contract with her with reference to such property or on the faith that her obligation arising out of such contract will be satisfied out of her separate property such person shall be entitled to sue her and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree ‡

'Provided that nothing herein contained shall—

(*a*) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or

(*b*) affect the liability of a husband for debts contracted by his wife's agency expressed or implied' §

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* Added by Act XIII of 1923
† Compare 33 & 34 Vict, c 93 s 11
‡ See the Indian Succession Act 39 of 1925
§ The words within quotations have been substituted by Act XXI of 1929

Notes—The Act is intended to include saparate property of a married woman subject to a restraint upon anticipation 12 C 5?2, 11 B 348, 30 M 378, 18 M 19 Husband is not a necessary party in a suit against her separate property where marriage took place before 1865 10 C L R 536, see also 8 B L R 372

Proviso—Section 10 of the Transfer of Property Act embodies what is known as the principle of 'restraint on anticipation' Before sections 4 and 44 of the Indian Succession Act, 1865, were enacted, under the common law the property of a woman became, on her marriage, the property of her husband, but property could be separately settled on her by means of the intervention of trustees The Married Women's Property Act, 1874, provided that she could hold her wages and earnings as separate property Section 8 of that Act, which relates to post nuptial debts of married woman, provides that if any person enters into a contract with a married woman possessed of separate property on the faith of being satisfied out of that property, such person is entitled to sue and to the extent of the separate property to recover what he might have received if she had been unmarried Section 10 of the Transfer of Property Act 1882 provides that property can be transferred to a married woman restraining her from alienating or charging it during coverture The question therefore arises whether a creditor of a married woman having property [illegible] a right to enforce his claim against it by [illegible] Property Act In other words whether [illegible] sions of s 10 of the Transfer of Property [illegible] 522) the question was answered in favour [illegible] that section 10 of the Transfer of Property Act left untouched the provision of the Married Women's Property Act This view was doubted in Bombay (I L R 11 B 348) and was not followed in Madras (I L R 30 Mad 378) It was correctly pointed out in the Bombay case that section 8 of the Married Women's Property Act was not intended to make a condition as to restraint on alienation invalid if it was valid under the Transfer of Property Act It only declares the liability of married woman for a debt contracted after marriage to be the same as far as a debt contracted before marriage It does not declare that her property subject to restraint is liable as if she were unmarried To make this point clear, we propose to introduce an exception in section 8 of the Married Women's Property Act in conformity with provision of section 10 of the Transfer of Property Act 1882'—*Report of the Special Committee*

V.—Husband's liability for Wife's Debts

Husband not liable for wife's antenuptial debts

9* A husband married after the thirty first day of December, 1865, shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property be liable to satisfy such debts as if she had continued unmarried

Proviso

Provided that nothing contained in this section shall† invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's antenuptial debts

‡*VI—Husband's liability for wife's breach of trust or devastation*

Extent of husband's liability for wife's breach of trust or devastation

10 Where a woman is a trustee, executrix or administratix either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or adminis tration be liable for any breach of trust committed by her or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of the deceased

* Compare 33 & 34 Vict. c. 93 s 12

† Here certain words repealed by Act XII of 1891, have been omitted

‡ Inserted by Act XVIII of 1927

THE MEASURES OF LENGTH ACT, 1889.

ACT NO. II OF 1889

RECEIVED THE G G 's ASSENT ON THE 15TH FEBRUARY, 1889

An Act to declare the Imperial standard yard for the United Kingdom to be the legal standard measure of length in British India

WHEREAS it is expedient to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India It is hereby enacted as follows —

Title, extent and commencement

1. (1) This Act may be called the Measures of Length Act, 1889

(2) It extends to the whole of British India , and

(3) It shall come into force on such day* as the Governor General in Council may appoint in this behalf

was adopted as unit for measures of disallowed that Act Since then no British India

Standard yard

2 The imperial standard yard for the United Kingdom shall be the legal standard measure of length in British India and be called the standard yard

Notes —At the time of the passing of the Act the English yard had practically superseded the ever varying measures of the Native dynasties throughout India *At that time people of India* became accustomed to use the English foot and inches — *Proceedings in Council*

Measure for determining length of standard yard

3 A copy, approved by the Governor General in Council of the imperial standard for determining the length of the imperial standard yard for the United Kingdom shall be kept in such place within the limits of the town of Calcutta as the Governor General in Council may prescribe, and shall be the standard for determining the length of the standard yard

...the standard yard must be was made in the Act for length of the imperial was then the capital of British India

Standard foot and inch

4 One third part of the standard yard shall be called a standard foot, and one thirty sixth part of such a yard shall be called a standard inch

Notes —A foot is a measure consisting of 12 inches and it is $\frac{1}{3}$ of a yard An inch is $\frac{1}{12}$ of a foot or $\frac{1}{36}$ of a yard

Presumption in favour of accuracy of certified measures

5 Any measure having stamped thereon or affixed thereto a certificate purporting to be made under the authority of the Governor General in Council or *of a Local* Government, and stating that the measure is of

servant having charge of the measure in pursuance of any direction published

* Came into force on 15th June 1889

in an official Gazette by order of the Governor General in Council or the Local Government, or by any person acting under the general or special authority of such a public servant be deemed to be correct until its inaccuracy is proved

Notes —The section authorises the presumption in favour of accuracy of certified measures

Inspection of certified measures by the public

6 A public servant having, in pursuance of such a direction, charge of such a measure as is mentioned in the last foregoing section shall allow any person to inspect it free of charge at all reasonable times and to compare therewith or with any measure marked thereon any measure which such person may have in his possession

Notes —The facility of inspection is given for public convenience

Certified measures to be kept by authorities required by existing enactments to keep measures of length

7 There shall be kept by the Commissioner of Police in the Town of Calcutta under section 55 of the Calcutta Police Act, 1866, by the Commissioners in Calcutta under section 370 of the Calcutta Municipal Consolidation Act 1888 by the Commissioner of Police in the City of Madras under section 32 of the Madras City Police Act, 1888, by the Municipal Commissioners in the city of Bombay under section 418 of the City of Bombay Municipal Act, 1888, and by the District Magistrate under section 20 of Regulation XII of 1827 of the Bombay Code such certified measures of the standard yard, standard foot and standard inch as are mentioned in section 5

THE INDIAN MEDICAL DEGREES ACT, 1916

ACT NO VII OF 1916

RECEIVED THE GOVERNOR GENERAL'S ASSENT ON THE 16TH MARCH, 1916

An Act to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles

Whereas it is expedient to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles, It is hereby enacted as follows —

Short title

1 This Act may be called the Indian Medical Degrees Act 1916

Definition

2 In this Act ' western medical science means the western methods of Allopathic medicine Obstetrics and Surgery, but does not include the Homœopathic or Ayurvedic or Unani system of medicine

Right to confer degrees etc

3 The right of conferring, granting or issuing in British India degrees, diplomas, licenses, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practise western medical science, shall be exercisable only by the authorities specified in the Schedule and by such other authority as the Governor General in Council may, by notification in the *Gazette of India*, and subject to such conditions and restrictions as he thinks fit to impose authorize in this behalf

Prohibition of unauthorised conferment of degrees etc

4 Save as provided by section 3 no person in British India shall confer, grant or issue or hold himself out as entitled to confer, grant or issue any degree, diploma license, certificate or other document stating or

implying that the holder, grantee or recipient is qualified to practise western medical science

5 Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to one thousand rupees, and if the person so contravening is an association, every member of such association who knowingly and wilfully authorises or permits the contravention shall be punishable with fine which may extend to five hundred rupees

Contravention of section 4

Notes — Where the accused leads people to believe that their college is allopathy college and issues allopathic diploma he is guilty under s 5, 37 C W N 767 = A I R 1933 Cal 456

6 Whoever voluntarily and falsely assumes or uses any title or description or any addition to his name implying that he holds a degree diploma license or certificate conferred granted or issued by any authority referred to in section 3 or recognised by the General Council of Medical Education of the United Kingdom or that he is qualified to practise western medical science shall be punishable with fine which may extend to two hundred and fifty rupees or if he subsequently commits and is convicted of, an offence punishable under this section with fine which may extend to five hundred rupees

Penalty for falsely assuming or using medical titles

Provided that nothing in this section shall apply to the use by any person of any title, description or addition which prior to the commencement of this Act, be used in virtue of any degree diploma license or certificate conferred upon or granted or issued to him

Notes — Ibid. 81 Ind Cas 197 = 25 Cr L J 09

7 No Court shall take cognizance of an offence punishable under this Act except upon complaint made by order of the Local Government, or upon complaint made with the previous sanction of the Local Government by a Council of Medical Registration established by any enactment for the time being in force in the province

Cognizance of offences

8 No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act

Jurisdiction of Magistrates

SCHEDULE

(*See section 3*)

1 Every University established by an Act of the Governor General in Council
2 The State Medical Faculty in Bengal
3 The College of Physicians and Surgeons of Bombay
4 The Board of Examiners Medical College Madras

THE INDIAN MERCHANDISE MARKS ACT, 1889

ACT NO IV OF 1889 *

RECEIVED THE G G S ASSENT ON THE 1ST MARCH 1889

An Act to amend the Law relating to Fraudulent Marks on Merchandise

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise, It is hereby enacted as follows —

1 (1) This Act may be called The Indian Merchandise Marks Act 1889

Title extent and commencement

* The Act has been declared in force in Upper Burma except the Shan States by Act XIII of 1898 s 4

(2) It extends to the whole of British India, * and

(3) It shall come into force on the first day of April, 1889.

Notes —A trader shall only be restrained from selling goods in his own name, where the use thereof is fraudulent *Burges* v *Burges*, 3 De G M & G 896 'No man can have any right to represent his goods as the goods of another person *Per Lord Justice Turner* in *Ibid*, see *Reddaway* v. *Banham*, (1896) A. C 199

Definitions

2 In this Act, unless there is something repugnant in the subject or context,—

(1) 'trade mark" has the meaning assigned to that expression in section 478 of the Indian Penal Code as amended by this Act

(2) "trade description" means any description, statement or other indication, direct or indirect —

(*a*) as to the number, quantity, measure gauge or weight of any goods, or

(*b*) as to the place or country in which, or the time at which any goods were made or produced or

(*c*) as to the mode of manufacturing or producing any goods, or

(*d*) as to the material of which any goods are composed, or

(*e*) as to any goods being the subject of an existing patent, privilege or copyright,

and the use of any numeral, word or mark which according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act

(3) "false trade description means a trade description which is untrue in a material respect as regards the goods to which it is applied and includes every alteration of a trade description, whether by way of addition, effacement or otherwise where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act

(4) "goods' means anything which is the subject of trade or manufacture and

(5) "name" includes any abbreviation of a name

Trade description—Where a design or pattern covers the whole body of goods and is part and parcel of goods themselves, it is not a trade description within this section 25 Ind Cas 998

Clause 2 (2) (*e*)—146 Ind Cas 1084=1933 Cr C 1423=A. I R 1933 Nag 344

Clause 3—*Vide* 26 B 289=3 Bom L R 883

Amendment of the Indian Penal Code

Substitution of new sections for sections 478 to 489 of the Indian Penal Code

3 For that part of Chapter XVIII of the Indian Penal Code which relates to Trade and Property Marks, the following shall be substituted, namely —

'Of Trade, Property and Other Marks

Trade mark

'478 A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a

expression "trade mark" inc
register of trade marks kept un
1883 and any trade mark which either with or without registration is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs and Trade Marks Act 1883, are, under order in Council for the time being applicable

* In s 1 certain words, which were repealed by Act IX of 1891 have been omitted

Trade Mark—A mark to be a trade mark or property mark must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person The mark in itself, does not denote anything of the kind and it is not necessary that it should do so The mer- sold goods with the mark of a firm which had of any transfer or assignment of the mark or business or the goodwill of the latter, is not sufficient to warrant a conviction ... infringement of trade or property mark 27 C 776=4 C W N 423 The word trade taken in its ordinary acceptance does not include lending money at interest 22 P R 1903 Cr =14 P L R 1903 The get up does not constitute a trade mark 2 L B R 149

Property mark

"479 A mark used for denoting that moveable property belongs to a particular persen is called a property mark

Property mark—A property mark is intended to denote ownership over all movable property belonging to a person whether it is all of one kind or different kinds So long as the persons own movable properties his property mark impressed upon them remains his, though any particular article out of it may after such ... of his hands and cease to be his The function of the property ... oyed because any particular property ... that ownership 6 Bom L R 513=1

Using a false trade mark

"480 Whoever marks any goods or any case, package, or other receptacle containing goods, or uses any case package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not is said to use a false trade mark

Cases—20 M 569, 13 Ind Cas 927 4 L B R 192, 10 C W N 107, 50 Ind Cas 165 46 Ind Cas 402

Using a false property mark

"481 Whoever marks any movable property or goods or any case, package or other receptacle containing movable property or goods or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark

Notes—*Vide* notes under section 477

Punishment for using a false trade mark or property mark

"482 Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Cases—26 B 289, 12 Cr L J 246 17 C W N 227, 11 C W N 887, 7 M L T 309, 27 Ind Cas 90?, 23 Ind Cas 689, 8 C W N 421, 32 C 696, 1 Wes 556, 31 C 411, 1 Weir 557, 8 C W N 41, 81 Ind Cas 922

Counterfeiting a trade mark or property mark used by another

"483 Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Notes—A person may have a right in his own name as a trademark, as against ... person ...sed by ...nants ... *Russ*

99 Federal Rep 276

Counterfeiting a mark used by a public servant

"484 Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that the property is of a particular quality, or has passed through a particular office or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Notes—This is an aggravated form of the offence As regards the definition of Public Servant, *vide* section 21 of the Indian Penal Code

Making or possession of any instrument for counterfeiting a trade mark or property mark

"485 Whoever makes or has in his possession any die plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both

Notes—By this section preparation for counterfeiting trade mark or property mark is punishable

Selling goods marked with a counterfeit trade mark or property mark

"486 Whoever sells, or exposes, or has in his possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or or property mark affixed to or impressed upon the same, or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Counterfeiting trade mark—In order [illegible]
tion of another, it is not necessary that [illegible]
It is sufficient if the resemblance is of [illegible]
unwary purchaser 9 Bom L R 7 [illegible]
and are covered by the word "goods [illegible]
counterfeit property mark is liable to be convicted under this section 8 C W N 421 Counterfeiting a label falls within this section 16 Bom L R 28, see also 32 C 431, A W N 1897, 99, 32 P R 1902 C

Making a false mark upon any receptacle containing goods

"487 Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both

Trade Mark—A mark to be a trade mark or property mark must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person The mark in itself, does not denote anything of the kind and it is not necessary that it should do so The mere fact that a certain firm imported and ... which had ceased to exist, in the absence of proof ... k or of the former having succeeded to the ... not sufficient to warrant a conviction for ... 27 C 776=4 C W N 423 The word ... does not include lending money at interest ... ie get up does not constitute a trade mark

2 L B R 149

Property mark.

"479 A mark used for denoting that moveable property belongs to a particular persen is called a property mark

Property mark—A property mark is intended to denote ownership over all movable property belonging to a person whether it is all of one kind or different kinds So long as the persons own movable properties his property mark impressed upon them remains his, though any particular article out of it may after such ... nction of the property ... ny particular property ... 6 Bom L R 513=1

Using a false trade mark

"480 Whoever marks any goods or any case, package, or other receptacle containing goods, or uses any case package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark

Cases—20 M 569, 13 Ind Cas 927, 4 L B R 192, 10 C W N 107, 50 Ind Cas 165, 46 Ind Cas 402

Using a false property mark

"481 Whoever *marks* any movable property or goods or any case, package or other receptacle containing movable property or goods or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it *to be believed* that the property or goods so marked or any property or goods *contained* in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark

Notes—*Vide* notes under section 477

Punishment for using a false trade mark or property mark

"482 Whoever uses *any false* trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Cases—26 B 289, 12 Cr L J 246, 17 C W N 227, 11 C W N 887, 7 M L T 309, 27 Ind Cas 902 23 Ind Cas 689, 8 C W N 421, 32 C 696, 1 Wes 556, 31 C 411, 1 Weir 557, 8 C W N 41, 81 Ind Cas 922

Counterfeiting a trade mark or property mark used by another

"483 Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Notes—A ... against ... person ... sed by ... tenants ... *Russ*

99 Federal Rep 276

Counterfeiting a mark used by a public servant

"484 Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that the property is of a particular quality, or has passed through a particular office or that it is entitled to any exemption or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine

Notes —This is an aggravated form of the offence As regards the definition of Public Servant, *vide* section 21 of the Indian Penal Code

Making or possession of any instrument for counterfeiting a trade mark or property mark

"485 Whoever makes or has in his possession any die plate or other instrument for the purpose of counterfeiting a trade mark or property mark or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both

Notes—By this section preparation for counterfeiting trade mark or property mark is punishable

Selling goods marked with a counterfeit trade mark or property mark

"486 Whoever sells or exposes, or has in his possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or or property mark affixed to or impressed upon the same, or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(*a*) that having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark and

(*b*) that, on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Counterfeiting trade mark —In order to prove that a trade mark is an imitation of another it is not necessary that there should be a resemblance in every case It is sufficient if the resemblance is of [illegible]
unwary purchaser 9 Bom L R 7 [illegible]
and are covered by the word 'goods [illegible]
counterfeit property mark is liable to [illegible]
421 Counterfeiting a label falls within this section 16 Bom L R -8, see also 32 C 431, A W N 1897 99; 32 P R 1902 C

Making a false mark upon any receptacle containing goods

"487 Whoever makes any false mark upon any case package or other receptacle containing goods in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both

"488 Whoever makes use of any such false mark, in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section

Punishment for making use of any such false mark

"489 Whoever removes, destroys, defaces, or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both"

Tampering with property mark with intent to cause injury

Trade Descriptions

4 (1) The provisions of this Act respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied shall extend to the application to goods of any such numerals, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they re " numerals, words or marks, or arrangement or

Provisions supplemental to the definition of false trade description

(2) The provisions tion of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means, as applied to any goods, any name or initials—

(*a*) not being a trade mark, or part of a trade mark, and

(*b*) being identical with, or a colourable imitation, of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches, is a false trade description

Notes—Where a design or pattern covers the whole body of goods and is part and parcel of the goods themselves, it is not a trade description within this section 25 Ind Cas 998

Application of trade descriptions

5 (1) A person shall be deemed to apply a trade description to goods who—

(*a*) applies it to the goods themselves, or

(*b*) applies it to any covering, label, reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

(*c*) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or

(*d*) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing

(3) The expression "covering" includes any stopper, cask, bottle, vessel box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket

6. If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisoment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in the case of a second or subsequent conviction with imprisoment which may extend to one year, or with fine, or with both

Penalty for applying a false trade description

Notes —A body corporate can be lawfully prosecuted and on conviction punished for an offence under section 482 or section 486 of the Indian Penal Code The word "he" in section 6 and 7 includes 'she' and 'it' 23 Ind Cas 689 The word 'persons in ss 6 and 7 include a company A company can be prosecuted under ss 6 and 7 *Ibid* This section and section 2 (1) (d) of the English Act both make the applying of a false trade description by a 'person' an offence unless he proves that he acted without intent to defraud *Ibid* See also 29 Ind Cas 998, 50 Ind Cas 165, 31 C 411 Where there is no infringement of patent or copy right and no attempt is made to pass off goods, mere imitation is no offence 146 Ind Cas 1084=A I R 1933 Nag 344

7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, he shall, unless he proves—

Penalty for selling goods to which a false trade description is applied

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade description, and

(*b*) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both

Notes —*Vide* notes under section 6

Unintentional Contravention of the law relating to Marks and Description

8 Where a person is accused under section 482 of the Indian Penal Code of using a false trade mark or property mark by reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 80 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark and proves—

Unintentional contravention of the law relating to marks and descriptions

(*a*) that in the ordinary course of business he is employed on behalf of other persons, to apply trade marks or property marks, or trade [illegible] dies plates or other instruments [illegible] ks or property marks and that [illegible] was so employed and was not interested in the goods or other things by way of profit or commission dependent on the sale thereof, and

(b) that he took reasonable precautions against committing the offence charged, and

(c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied,

he shall be acquitted

Forfeiture of Goods

Forfeiture of goods

9 (1) When a person is convicted under section 482 of the Indian Penal Code of using a false trade mark, or under section 486 of that Code of selling, or exposing, or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark applied thereto, or under section 487 or section 488 of that Code of making or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods, or of selling, or exposing, or having in possession for sale or any purpose of trade or manufac ture, any goods or things to which [illegible] acquitted on proof of the matter or m[illegible] Penal Code or section 7 or section 8 [illegible] ting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed

(2) When a forefeiture is directed on a conviction, and an appeal lies against the conviction, an appeal shall lie against the forefeiture also

(3) When a forefeiture is [illegible] the goods or things to which the [illegible] rupees, an appeal against the fo[illegible] rom the date of the direction, to [illegible] lie from sentences of the Court

Amendment of the Sea Customs Act, 1878

Amendment of section 18 of Act VIII of 1878

10 (1) For clause (d) of section 18 of the Sea Customs Act, 1878, the following shall be substituted, namely —

"(d) [illegible] terfeit trade mark within the mean- [illegible] description within the meaning of [illegible]

(e) goods made [illegible] British In[illegible] purportin[illegible] as a manufactureer, dealer or trader in the United Kingdom or in British India unless—

(1) the name [illegible]

[illegible] that indication [illegible] letters as large and conspicuous as any letter in the name or trade mark, and the same language and character as the name or trade mark

(2) To section 18 of the Sea C[illegible], 1878, as amended by sub-section (1 [illegible] sold by length or by the piece, which—

(1) have not conspicuously stamped in English n[illegible] piece the [illegible] of such

(ii) have been manufactured beyond the limits of India, or

(iii those limits have been manufactured beyonc nises which if they were in British Indi1, Indian Factories Act, 1881

Notes —By section 18 of the former Act (VIII of 1878) as amended by section 10 of the latter Act (IV of 1884) the importation of goods having applied to them a counterfeit trade mark is forbidden 4 C L J 268

Addition of a section after section 19 of Act VIII of 1878

11 The following shall be added after section 19 of the Sea Customs Act, 1878, namely —

19A (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be or taking any further proceedings with a view to the confiscation, thereof under this Act, the Chief Customs officer or other officer appointed by the Local Government in this behalf may require the regulations under this section whether as to information security, conditions or other matters, to be complied with and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported

(2) The Governor General in Council may make regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence

vith, or a colour r British India letters and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name - British India

(4) Such importation of which is prohibited by rent regulations may be made respecting different classes of such goods or of offences in relation to such goods

(5) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention

(6) All regulations under this section shall be published in the *Gazette of India* and in the Calcutta Fort St George, Bombay and Burma Gazettes

Notes —'By section 19 A (1) of the Sea Customs Act, it is provided that before detaining such goods as are referred to under section 18 of the Sea Customs Act or taking further proceedings with a view to the confiscation thereof, the Chief Customs Officer may require the regulations under this section to be complied with 'and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported' It empowers the Governor General in Council to make regulations either general or special respecting the detention and confiscation of goods the importation of which is prohibited and the conditions if any to be fulfilled before such detention and confiscation and the Governor General in Council may by

Stamping of length of Piece goods manufactured in British India

Stamping of length of piece goods manufactured in British India

12 (1) Piece goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory as defined in the Indian Factories Act, 1881, shall not be removed from those premises without having conspicuously stamped

in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece

(2) If any person removes or attempts to remove any such piece goods from any such premises without the length of each piece being stamped in the manner mentioned in sub section (1), every such piece and everything used for the packing or removal thereof, shall be forfeited to Her Majesty, and such person shall be punished with fine which may extend to one thousand rupees

Notes —This provision has been made to prevent fraud on customers

Supplemental Provisions

Evidence of origin of goods imported by sea

13 In the case of goods brought into British India by sea, evidence of the port of shipment shall in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *prima facie* evidence of the place or country in which the goods were made or produced

Notes —This section corresponds to Merchandise Marks Act, 1887 [50 & 51 Vict c 28 s 10 (2)]

Costs of defence or prosecution

14 (1) On any such prosecution as is mentioned in the last foregoing section or on any prosecution for an offence against any of the sections of the Indian Penal Code as amended by this Act which relate to trade property and other marks the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively

(2) Such costs shall on application to the Court be recoverable as if they were a fine

Notes —The appellate Court can also award costs *Vide* 54 Ind Cas 834

Limitation of prosecution

15 (1) No such prosecution as is mentioned in the last foregoing section, shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens

Notes —An n e c

the date of the first recourse to the Crimi are diligent 22 M

mark is being infringed some recent instance in wh Bur L T 19, 10 Ind Ca 1930 Cal 275, A I R 1 193 A I R 1931 Mad 279 but see A I R 1932 Sind 94=26 S L R 241, A I R 1932 Sind 94

First discovery —The words 'first discovery' mean when the complainant first discovered the offence 32 C W N 699

Authority of the Governor General in Council to issue instructions as to administration of this Act

16 (1) The Governor General in Council may, by notification in the *Gazette of India*, and in local official Gazettes issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act

(2) Instructions under sub section (1) may provide, among other matters for the limits of variation as regards number, quantity, measure, gauge or weight, which are to be recognized by Criminal Courts as permissible in the case of any goods

Implied warranty on sale of marked goods

17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and deliver at the time of the sale or contract to and accepted by the buyer

Savings

18 (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India, who in good faith acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master

Definition of piecegoods

19 * For the purpose of section 12 of this Act, and clause (*f*) of section 18 of the Sea Customs Act, 1878 as amended by this Act, the Governor General in Council may, by notification in the *Gazette of India*, declare what classes of goods are included in the expression "piecegoods, such as are ordinarily sold by length or by the piece"

Determination of character of goods by sampling.

20 * ( ) The Governor General in Council may make rules for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity measure, gauge, or weight, for the number of samples to be selected and tested and for the selection of the samples

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub section (1) the Court or officer of Customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing determine the number of samples to be selected and tested and the manner in which the samples are to be selected

(3) The average of the results of the testing in pursuance of rules under sub section (1), or of an order under sub section (2), shall be *prima facie* evidence of the number, quantity, measure gauze or weight, as the case may be, of the goods

(4) If a person having any claim to, or in relation to any goods of which samples have been selected and tested in pursuance of rules under sub section (1), or of an order under sub section (2) desires that any further samples of the goods be selected and tested, they shall on his written application and on the payment in advance by him to the Court or officer of Customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Governor General in

* Ss 19, 20, 21 and 22 have been added by Act IX of 1891, and s 19, as originally enacted has been omitted, having been repealed by Act IX of 1891—See ss 2 and 4 of Act IX of 1891

Council in this behalf or as in the case of goods with respect to which provision is not made in such rules the Court or officer of customs may determine in the circumstances to be reasonable the samples being selected in manner prescribed under sub section (1) or in sub section (2) as the case may be

(5) The average of the results of the testing referred to in sub section (3) and of the further testing under sub section (4) shall be conclusive proof of the number quantity measure, gauze or weight as the case may be of the goods

(6) Rules under this section shall be made after previous publication

Information as to commission of offence

21 * An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act

Punishment of abetment in India of acts done out of India

22 * If any person being with mitted under of the Indian Penal Code which relates to trade, property and other marks be an offence he may be tried for such abetment in any place in British India in which he may be found and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted

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THE MESNE PROFITS AND IMPROVEMENTS ACT 1855 †

ACT NO XI OF 1855 †

RECEIVED THE G G S ASSENT ON THE 27TH MARCH 1855

An Act relating to mesne profits and to improvements made by holders under defective titles in cases to which the English law is applicable

Preamble

WHEREAS it is expedient in cases to which the English law is applicable, *to limit the liability for mesne profits and* to secure to *bonafide* holders under defective titles the value of improvements made by them It is enacted as follows —

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ole of B itish Ind a
/ of 1874) s 3
of 1897)
Act (XIV of 1874)

Sindh	*See Gazette of India*	1880 Pt I p 672
West Jalpa guri	Ditto	1881, Pt I p 74
The D s ricts of Hazaribagh Lohardadga and Manbhum and Pargana Dhalbhum and the Kolhan in the Distr ct of S ngbhum	Ditto	1881 Pt I p 504
The scheduled port on of the Mirzapur D str ct	Ditto	1879 Pt I p 383
Jaunsar Bawar	D tto	1879 Pt I p 382
The D s r cts of Hazara Peshawar Kohat Bannu Dera Ismail Khan and		

No person chargeable with rent *bona fide* paid to holder under defective title

1. No person shall be chargeable with any rents or profits of any immovable property which he has *bona fide* paid over to any person whom he *bona fide* held the same, notwithstanding it may afterwards appear that the person to whom such payment was made had no right to receive such rents or profits

Value of improvements made by *bona fide* holders under defective titles secured to them

2. If any person shall erect any building or make an improvement upon any lands held by him *bona fide* in the belief that he had an estate in fee simple, or other absolute estate, and such person, his heirs, or assigns, or his or their under tenants, be evicted from such lands by any person having a better title, the person who erected the building or made the improvement, his heirs or assigns, shall be entitled either to have the value of the building or improvement so erected or made during such holding and in such belief, estimated and paid or secured to him or them, or, at the option of the person causing the eviction, to purchase the interest of such person in the lands at the value thereof, irrespective of the value of such building or improvement

Amount how fixed

Provided that the amount to be paid or secured in respect of such building or improvement shall be the estimated value of the same at the time of such eviction

Notes —Where a person built a house on a site to which he had no right without zamindar's permission —*held* that the claim by latter for possession of the land and removal of the building was not barred provided that the erection was effected without his knowledge—*Guradhar* v *Nandram*, 1 Agra 244

Act to apply only to cases governed by English law

3 Nothing in this Act contained shall extend to any case to which the English law is not applicable

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THE MORTGAGED ESTATES ADMINISTRATION ACT, 1855 *

ACT NO XXIII OF 1855

RECEIVED THE G. G.'s ASSENT ON THE 13TH AUGUST, 1855

An Act to amend the Law relating to the administration of the Estates of deceased persons charged with money by way of Mortgage

Preamble

WHEREAS it is expedient that the law, under which the real and personal assets of deceased persons subject to the English law are administered, should be amended, It is enacted as follows —

Dera Ghazi Khan ..	*See Gazette of India*	1886, Pt I p 48
The Scheduled Districts		
Central Provinces	Ditto	1879, Pt I p 771
The District of Sylhet ..	Ditto	1879 Pt I p 631
The rest of Assam (except the North Lushai Hills)	Ditto	1897, Pt I p 229

It has been extended under the same Act, to the Scheduled Districts of Kumaon and Garhwal —*See Gazette of India*, 1876 Pt I P 606

It has deen declared under the same Act not to be in force in the Scheduled District of Lahaul —*See Gazette of India*, 1886 Pt I P 301

The words [illegible] with s I are [illegible] is extended [illegible] ealed, except, [illegible] by Act VIII of 1866

1 If any person shall die seised of, or entitled to any estate or interest in any land or other hereditaments within the territories in the possession of and under the Government of, the East India Company, which shall, at the time of his death, be charged with the payment of any sum or sums of money by way of mortgage and such person shall not by his Will or deed or other document have signified any contrary or other intention the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person but the land or hereditaments so charged shall as between the different persons claiming through or under the deceased person be primarily liable to the payment of all mortgage debts, with which the same shall be charged every part thereof according to its value bearing a proportionate part of the mortgage-debts charged on the whole thereof

Heir or devisee of land not to claim payment of mortgage out of personality

Provided always that nothing herein contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt either out of the personal estate of the person so dying as aforesaid or otherwise

Proviso as to right of mortgagee to satisfaction from personal assets

Provided also that nothing herein contained shall affect the rights of any person claiming under or by virtue of any Will, deed or document already made, or to be made, before this Act shall have come into operation

Proviso as to claims made prior to this Act

THE MUSSALMAN WAKF ACT 1923

ACT NO XLII OF 1923

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 5TH AUGUST, 1923

An Act to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties

WHEREAS it is expedient to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties, It is hereby enacted as follows —

Preliminary

Short title extent and commencement

1 (1) This Act may be called the Mussalman Wakf Act, 1923,

This title has been given by the Indian Short Titles Act, (XIV of 1897)

Act XXIII of 1855 has been declared as regards such descents and devises to be *in force in the whole of* British India except the Scheduled Districts by the Laws Local Extent Act (XV of 1874) s 3

It has been declared under the Scheduled Districts Act (XIV of 1874), to be *in force in the following Scheduled Districts* —

West Jalpaiguri	*See Gazette of India*	1881, Pt I p 74
The Districts of Hazaribagh Lohardaga (now Ranchi Districts) and Manbhum and Pargana Dhalbhum and the Kalhan, in the District of Singhbhum	Ditto	1881, Pt I p 504

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas,

(3) This section shall come into force at once, and

(4) The Local Government may by notification in the local official Gazette, direct that the remaining provisions of this Act, or any of them which it may specify, shall come into force in the Province, or any specified part thereof, on such date as it may appoint in this behalf

Notes—For several years past there has been a growing feeling amongst the Muhammadan community thr [illegible] which have been made or are [illegible] madans are being wasted for [illegible] hands the trust may have come in course of time Instances of such misuse of trust property are unfortunately so very common that Wakf endowment has now come [illegible] clever device to tie up property in order to [illegible] law under the cloak of a plausible dedica [illegible] "utwallis are persons who are utterly unfit [illegible] and who by their moral delinquencies bring discredit not merely on the endowment but on the community itself It is believed that the feeling is unanimous that some steps should be taken in order that incompetent and unscrupulous mutwallis may be checked in their career of waste and mismanagement and that the endowments themselves may be appropriated to the purposes for which they had been originally dedicated ' *Statement of Objects and Reasons* The whole object of this Act is to provide a speedy method of exercising control over the management of all these wakf properties in respect [illegible] was no dispute 9 O W N 538=A L R [illegible] the Act does not depend on the attitude which [illegible] he origin of an alleged wakf 7 Luck 601=9 [illegible] R 1932 Oudh 210 (F B) [illegible] Mussalman Wakf Act, *Vide* A I R 1930 Oudh 509

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(*a*) benefit" does not include any benefit which a mutwalli is entitled to claim solely by reason of his being such mutwalli,

(*b*) "Court" means the Court of the District Judge or, within the limits of the ordinary original civil jurisdiction of a High Court, such Court subordinate to the High Court, as the Local Government may, by notification in the Local official Gazette, designate in this behalf,

(*c*) "mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a Court of competent jurisdiction to be the mutwalli of a wakf, and includes a naib mutwalli or other person appointed by a mutwalli to perform the duties of the mutwali, and, save as otherwise provided in this Act, any person who is for the time being administering any wakf property,

(*d*) "prescribed" means prescribed by rules made under this Act, and

(*e*) "wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable, but does not include any wakf, such as is

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The scheduled portion of the Mirzapur District	*See Gazette of India*	1879 Pt I p 383
Jaunsar Bawar	Ditto	1879, Pt I p 382
The Districts of Hazara Peshawar, Kohat Bannu Dera Ismail Khan and Dera Ghazi Khan	Ditto	1886, Pt I p 48
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the statement referred to in sub section (1) shall be furnished, in the case referred to in clause (a) within six months of the date on which the wakf is created or, if it has been created by a written document, of the date on which such document is executed, or, in the case referred to in clause (b), within six months of the date of the death of the person entitled to such benefit as afore said, or of the last survivor of any such persons, as the case may be

Notes —Even before the enactment of this Act, the kazi or judge had the power of removing a *mutwalli* for breach of trust even though the appropriator should have made it a [illegible] *Law*, p 126 [illegible] under the [illegible] accounts un [illegible] so 54 A 475=A I R 1932 A 758

4 (1) When any statement has been furnished under section 3, the Court shall cause notice of the furnishing thereof to be affixed in some conspicuous place in the Court house and to be published in such other manner if any as may be prescribed and thereafter any person may apply to the Court by a petition in writing accompanied by the prescribed fee, for the issue of an order requiring the mutwalli to furnish further particulars or documents

Publication of particulars and requisition of further particulars

(2) On such application being made the Court may, after making such inquiry, if any, as it thinks fit, if it is of opinion that any further particulars or documents are necessary in order that full information may be obtained regarding the origin, nature or objects of the wakf or the condition or management of the wakf property, cause to be served on the mutwalli an order requiring him to furnish such particulars or documents within such time as the Court may direct in the order

Notes —The Court is empowered to ask for further particulars on the application of any person

Statement of Accounts and Audit

5 Within three months after the thirty first day of March next following the date on which the statement referred to in section 3 has been furnished, and thereafter within three months of the thirty first day of March in every year, every mutwalli shall prepare and furnish to the Court to which such statement was furnished a full and true statement of accounts, in such form and containing such particulars as may be prescribed of all moneys received or expended by him on behalf of the wakf of which he is the mutwalli during the period of twelve months ending on such thirty first day of March or as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf

Statement of accounts

Provided that the Court may, if it is satisfied that there is sufficient cause for so doing extend the time allowed for the furnishing of any statement of accounts under this section

Notes —Statement of accounts are to be filed every year Such accounts before filing must be audited under section 6 This section does not contemplate intervention of other person to compel *Mutwalli* to file accounts 52 A 167

Audit of accounts

6 Every statement of accounts shall, before it is furnished to the Court under section 5, be audited—

(a) in the case of a wakf the gross income of which during the year in question, after deduction of the land revenue and cesses, if any, payable to the Government, exceeds two thousand rupees, by a person who is the holder of a certificate granted by the Local Government under section 144 of the Indian

Companies Act 1913,* or is a member of any institution or association the members of which have been declared under that section to be entitled to act as auditors of companies throughout British India, or

(*b*) in the case of any other wakf, by any person authorized in this behalf by general or special order of the said Court.

Notes—The auditor must be a person qualified under s 144 of the Indian Companies Act An auditor must examine the books and call for information and explanation and if he fails in his duties he is liable 23 A L J 473=L R 6 A 425=47 A 669=88 Ind Cas 785

General Provisions.

7 Notwithstanding anything contained in the deed or instrument creating any wakf every mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 3 or section 4 or in respect of the preparation or audit of the annual accounts for the purposes of this Act

Mutwalli entitled to pay cost of audit etc from wakf funds

Notes—The expenses of preparation and audit of accounts and the cost of furnishing particulars of documents or copies under section 3 or section 4 should be borne by the wakf even if there be a direction in the deed creating wakf, to the contrary

8 Every statement of particulars furnished under section 3 or section 4, and every statement of accounts furnished under section 5 shall be written [in urdu or]† in the [illegible] it is furnished, and shall be verified in the [illegible] Civil Procedure, 1908 ‡ for the signing and [illegible]

Verification

Verification [illegible]

[illegible] the same as that followed in the case of defective signature 18 A 306 20 A 44[illegible]

9 Any person shall with the permission of the Court and on payment of the prescribed fee, at any time at which the Court is open, be entitled to inspect in the prescribed manner, or to obtain a copy of, any statement of particulars or any document furnished to the Court under section 3 or section 4 or any statement of accounts furnished to it under section 5, or any audit report made on an audit under section 6

Inspection and copies

Inspection—The right of inspection does not carry with it the right to take copies *Balaghat Co*, (1901) 2 K B 665 Hence this section makes provision for obtaining copies

Penalty

10 Any person who is required by or under section 3 or section 4 to furnish a statement of particulars or any document relating to a wakf, or who is required by section 5 to furnish a statement of accounts shall, if he, without reasonable cause the burden of proving which shall be upon him, fails to furnish such statement or document, as the case may be, in due time, or furnishes a statement which he knows or has reason to believe to be false, misleading or untrue in any material particular, or, in the case of a statement of accounts furnishes a statement which has not been audited in the manner required by section 6,

Penalties

* VII of 1913

† The words within brackets have been substituted in the Province of Bihar and Orissa by B & O Act I of 1926

‡ V of 1908

be punishable with fine which may extend to five hundred rupees, or, in the case of a second or subsequent offence with fine which may extend to two thousand rupees

Notes—Failure to perform duties under sections 4 and 5 [illegible] this section 52 A 167 An offence under [illegible] 28 Cr L J 954 Section 10 of the Act of [illegible] comply with the requirements of the Act [illegible] 547 There is no provision in this section f[illegible] in default of fine 140 Ind Cas 468=1932 A L J 266=A I R 1932 A 389 In a prosecution under this section Magistrate is competent to enquire whether property is wakf or not 58 B 302=36 Bom L R 311=A I R 1934 Bom 169

Rules

Power to make rules

11 (1) The Local Government may, after previous publication, by notification in the local official Gazette, make rules to carry into effect the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely —

(a) The additional particulars to be furnished by mutwallis under clause (g) of sub section (1) of section 3,

(b) The fees to be charged upon applications made to a Court under sub section (1) of section 4,

(c) The form in which the statement of accounts referred to in section 5 shall be furnished, and the particulars which shall be contained therein,

(d) The powers which may be exercised by auditors for the purpose of any audit referred to in section 6, and the particulars to be contained in the reports of such auditors,

(e) The fees respectively chargeable on account of the allowing of inspections and of the supply of copies under section 9

(f) The safe custody of statements audit reports and copies of deeds or instruments furnished to Courts under this Act, and

(g) Any other matter which is to be or may be prescribed

Notes—The Local Government is authorised to make rules as regards certain matter mentioned in clause (2)

Savings

12. Nothing in this Act shall—

(a) affect any other enactment for the time being in force in British India providing for the control or supervision of religious or charitable endowments, or

(b) apply in the case of any wakf the property of which—

(i) *is being administered by the Treasurer of Charitable Endowments,* the Administrator General or the Official Trustee, or

(ii) is being administered either by a receiver appointed by any Court of competent jurisdiction, or under a scheme for the administration of the wakf which has been settled or approved by any Court of competent jurisdiction or any other authority acting under the provisions of any enactment

Clause (a)—*Vide* Act XIV of 1920

Clause (b)—*Vide* Acts VI of 1890, II of 1913 and III of 1913

Sub Clause (ii)—Even before the passing of this enactment, the kazi was vested with the discretion of making such alterations in the management of the wakf, as might be for its benefit and at the same time generally consistent with the wishes of the *wakf—Amir Ali's Student's Mahomedan Law* p 130

Exemption

13 The Local Government may, by notification in the local official Gazette, exempt from the operation of this Act or of any specified provision thereof any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community

THE MUSSALMAN WAKF VALIDATING ACT, 1913

ACT NO VI OF 1913

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 7TH MARCH, 1913

An Act to declare the rights of Mussalmans to make settlements of property by way of 'wakf' in favour of their families, children and descendants.

WHEREAS doubts have arisen regarding the validity of wakfs created by person professing the Musalman faith in favour of themselves their families, children and descendants and ultimately for the benefit of the poor or for other religious pious or charitable purposes and whereas it is expedient to remove such doubts, it is hereby enacted as follows —

Short title and extent

1 (1) This Act may be called the Mussalman Wakf Validating Act, 1913

(2) It extends to the whole of British India

Notes —Th... XXXII of 1932 Section 2 ... shall be

retrospective legislation should as ... have introduced a prov so to that effect This Act may be construed as merely validating 12 Lah 725—A I R 1931 Lah 578=132 Ind Cas 689 (F B)

Definitions

2 In this Act unless there is anything repugnant in the subject or context,—

(1) 'Wakf' means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious pious or charitable

(2) 'Hanafi Mussalman' means a follower of the Musalman faith who conforms to the tenets and doctrines of the Hanafi School of Mussalman law

Notes —The ob... remove disabilities and great hardship that ... decisions in *Abdul Fata Mohamed* v *Russo* ... 22 I A 76 and other cases That case ... 498=17 I A 28 and 17 B 1=19 I A 170

By these cases it was decided that under ... ment expressly made as *Wakf* was n... but an illusory gift to the poor See als... 329, 4 C L J 442, 25 A 236, 5 Bom ... 379, 8 Bom L R 245, 10 C W N 449, 35 C 1, 9 Bom L R 998, 28 M L J 254 1930 A L J 978, 60 C 901=37 C W N 741=A I R 1933 Cal 716

... valid wakf but it does not purport to deal with the objects of which are indefinite or uncertain 15 Trust for slaves and dependants are not ... A 74=36 C W N 310=1932 A L J 245=62 ... L R 510=136 Ind Cas 454=55 C L J ... 1932 P C 190 (P C) As regards disposition in favour of members of family whether valid under this Act *vide*, 138 Ind Cas 616=I R 1932 A 485

The decision does ...

safeguard for the authenticity of the *wakfnama* and for prevention of fraud upon creditors or otherwise—*Statement of Objects and Reasons*

Restropective—By Act 32 of 1932 cases in 50 Ind Cas 77, 19 C W N 76; 19 C W N 967, 43 C 158, 44 A 1, 24 C W N 18, 32 C W N 258, 27 C W N, 101, 39 B 563, 40 M 116 have been made obsolete

3 It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes —

Power of Mussalmans to creat certain wakfs

(*a*) for the maintenance and support wholly or partially of his family, children or descendants, and

(*b*) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character

Notes—This section defines the power of a person professing Mussalman faith to create wakf A wakf, the dominant purpose of which is charitable is valid independent of the Act 41 Ind Cas 684 No change in the law has been effected by this Act 40 L W 806 A wakf which is not charitable can not be created by this Act *Ibid*, 37 C W N 741 This Act does not apply to wakf executed prior to this Act 1933 A L J 97 The word wakf should not only satisfy definition in s 2 but also satisfy proviso to s 3 A I R 1932 Oudh 71=8 O W N 302 Wakf in which whole of ultimate benefit is not reserved for poor or for other religious propose comes under Mussalman Wakf Act of 1923 and not under Act of 1913 60 C 790=37 C W N 39,=A I R 1933 Cal 581 The word family in clause (a) includes only person who resides in the house of the donor and for whose maintenance the donor is responsible 10 O & A L R 896 Under clause (b) provision can be made for the payment of the donor s debt out of the dedicated property 34 C L J 444=67 Ind Cas 77 Under the Mussalman Law every object which tends to the

All 180, A I R 1928 Nag 10, A I R 1928 A 516 See also 54 C L J 80, 8 O W N 1302, 129 Ind Cas 163 A wakf does not become invalid because a minor [illegible] Where a trustee has a discre[illegible] and ascertainable objects [illegible]pportionment by the trustee [illegible] non charitable equally 59 [illegible] 657=A I R 193[illegible] Cal 93

4 No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purposes of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf

Wakfs not to be invalid by reason of remoteness of benefit to poor etc.

Notes—Where a wakf is made in favour of individuals and no other purpose is mentioned on the extinction of the person for whom it is primarily created it will

enure to the benefit of the poor ho are the ultimate beneficiaries of all wakfs A wakf therefore can never be avoided by the failure of the objects for which it is primarily c eated—*Amir Ali's Students Mahomedan Law*, p 121

Saving of local and sectarian custom

5 Nothing in this Act shall affect any custom or usage whether local or prevalent among Mussalmans of any particular class or sect

Notes —By this section local and sectar an customs are safeguarded

THE MUSSALMAN WAKF VALIDATING ACT, 1930.

ACT NO XXXII OF 1930

RECEIVED THE G G S ASSENT ON THE 25TH JULY, 1930

An Act to give retrospective effect to the Mussalman Wakf Validating Act 1913

WHEREAS the Mussalman Wakf Validating Act 1913 * does not apply to wakfs created before its enactment,

And whereas it is expedient to validate such wakfs without infringing any rights contrary thereto which may have already accrued or been acquired, It is hereby enacted as follows —

Short title

1 This Act may be called the Mussalman Wakf Validating Act 1930

Notes —[illegible]

Act VI of 1913 to apply retrospectively

2 The Mussalman Wakf Validating Act, 1913 *shall be deemed to apply to wakfs created before its commencement

Provided that nothing herein contained shall be deemed in any way to affect any right title, obligation or liability already acquired accr ed or [illegible]

have [illegible] vested r ghts and we
merel [illegible] as amended by us
ceme [illegible] Committee [illegible] before its commen

THE NATIVE COINAGE ACT, 1876

ACT NO IX OF 1876.†

RECEIVED THE G G 'S ASSENT ON THE 28th MARCH 1876

An A t to enable the Government of India to declare certain coins of Native States to be a legal tender in British India

Preamble

WHEREAS it is expedient to enable the Governor General in Council to declare that a tender of payment of money, if made in certain coins made for or issued by

* VI of 1913

† Act IX of 1876 has been declared under the Scheduled D[illegible] A[illegible] 1874) to be in force [illegible] bagh, Lohardaga [illegible] trict of S ngbhum D str ct of Palamau

Native States, shall be a legal tender in British India, It is hereby enacted as follows :—

Short title

1 This Act may be called the Native Coinage Act, 1876

Local extent

It extends to the whole of British India *—

Interpretation clause

2 In this Act "Native State means any State in India which is under the protection or political control of Her Majesty, or of which the Government shall have acknowledged the supremacy of the British Crown

Power to declare that the coins of a Native State shall be legal tender

3 Subject to the provisions of section 4, the Governor General in Council may, from time to time, by notification in the *Gazette of India*, declare that a tender of payment of money, if made in the coins, or the coins of any specified metal, made under this Act for any Native State, shall be a legal tender in British India

and the provisions of the Indian Coinage Act 1870, shall apply to the coins to which such notification refers so far as such provisions are applicable thereto, and save as expressly provided by such notification

When such power may be exercised

4 The power conferred by the first clause of section 3 shall be exercisable only when the coins referred to in such notification comply with the following conditions (that is to say)—

In the case of coins of gold, silver or bronze,

(*a*) their fineness is identical with that for the time being prescribed by law for coins of the Government of India of the same metal,

in the case of coins whether of gold, silver, bronze or copper

(*b*) they are identical in weight with some coins of the Government of India of the same metal, which may for the time being be legally coined at any Mint of the Government of India, or bear such relation thereto as is approved by the Governor General in Council,

(*c*) the devices upon their obverse, and reverse differ from the devices on coins now made or issued by any such Native State and have been approved by the Governor General in Council,

(*d*) upon each of such coins its value in money of the Government of India is inscribed in the English language,

(*e*) the Native State for which they are coined has undertaken to abstain, during a term of not less than thirty years from the date of the notification, from coining in its own mint gold, silver bronze or copper as the case *may be, and has also undertaken that no coins resembling coins for the time* being a legal tender in British India shall after the expiration of the said term, be struck under its authority or with its permission at any place within or without its jurisdiction,

(*f*) such State has formally declared that a tender of payment of money, if made in coins of the Government of India of the same metal shall, in the territories subject to such State, be a legal tender in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India,

(*g*) and rules for the time being in force of coin of the Government of India redi or otherwise, or counterfeit or called in by proclamation, shall apply to the coins made for such State under this Act, and that it will defray the cost of cutting and breaking them, and

* Certain words after this having been repealed by Act X of 1914 have been omitted

(*h*) such State has also agreed not to issue the same coins below their nominal value and not to allow any discount or other advantage to any person in order to bring them into circulation

Native States authorized to send metal to British India Mint for coinage

5 It shall be lawful for any such State to send to any Mint in British India metal to be made into coin under this Act, and, subject to the Mint rules for the time being in force and to the provisions hereinafter contained the Mint master shall receive such metal and convert it into coin, provided that it be fit for coinage

Nothing herein contained shall be deemed to entitle any such State to have coins made under this Act at any mint of the Government of India of any metal which is not for the time being legally coined at such Mint

Power to impose charge for coinage

6 The Governor General in Council may impose on any metal sent to a mint for coinage under this Act the duty (if any) leviable on the same metal under the Indian Coinage Act 1870, and also a charge sufficient to defray the expenses of coinage over and above the expenses of assay and refining and the Mint master shall coin such metal at the charge so imposed

Power to fix number of coins to be made under this Act for any Native State

7 The Governor General in Council may, from time to time with reference to the reasonable requirements of the population of any Native State fix the maximum number of any coins of any particular metal that shall be coined under this Act

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THE NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT, 1866

ACT NO. XXI OF 1866 *

Received the G G's Assent on the 2nd April, 1866

An Act to legalize under certain circumstances the dissolution of marriages of Native Converts to Christianity

Preamble

Whereas it is expedient to legalize under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated on religious grounds by their wives or husbands, It is enacted as follows —

Short title

1 This Act may be cited as The Native Converts' Marriage Dissolution Act, 1886

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the whole of British India except

Parganas by Reg III of 1872 s 3

Districts Act (XIV of 1874) to be

-ly —

f India

West Jalpaiguri		1880 Pt I p 672
The District of Darjiling	Ditto	1881, Pt I p 74
The Districts of Hazaribagh Lohardaga (now Ranchi Districts) and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum	Ditto	1886 Pt I p 500
	Ditto	1881, Pt I p 504

2 [*Commencement of Act*] *Repealed by Act XVI of 1874*

Interpretation clause.

3 In this Act—

'Native husband' shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew ·

"Native wife' shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess

"Native law' shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians Muhammadans and Jews ·

"month" and "year" shall respectively mean month and year according to the British calendar

"High Court" shall mean the highest Civil Court of appeal in any place to which this Act extends *

When convert deserted by his wife may sue for conjugal society

4 If a Native husband change his religion for Christianity and if in consequence of such change his Native wife for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society

When convert deserted by her husband may sue society

5 If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband for the space of six continuous months desert or repudiate her, she may sue him for conjugal society

Court in which suit shall be brought

6 If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature the suit shall be commenced in such Court, otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit

Suit to be commenced by verified petition

7 The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow

The Porahat Estate in the Singbhum District	*The Gazette of India*	1897 Pt I, p 1059
The scheduled portion of the Mirzapur District .	Ditto	1879, Pt I 383
Jaunsar Bawar	Ditto .	1879 Pt I 382
The District of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan	Ditto	1886, Pt I p 48
The District of Sylhet	Ditto	1879, Pt I p 631
The rest of Assam (except the North Lushai Hills) .	Ditto	1897 Pt. I p 299
The District of Lahaul	Ditto .	1887, Pt. I, p 301

It has been extended, under the same Act, to the following Scheduled Districts, namely —

Kumaon and Gharhwal	See *the Gazette of India*	1876 Pt I p 606
The Tarai of the Province of Agra ..	Ditto	1876 Pt I, p 505

* Here certain words which were repealed by Act X of 1914 have been omitted

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints, and the petition* may be amended by permission of the Court

On service of petition citation to respondent

8 A copy of the petition shall be served upon the respondent and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

Form of citation

9 In ordinary cases the citation shall be in the form in the second schedule to this Act or as near thereto as the circumstances of the case will allow

But where the respondent is exempt by law from personal appearance in Court or where the Judge shall so direct the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow,

Service of citation

10 A copy of the citation sealed with the seal of the Court shall be served on the respondent, and the provisions of the Code of Civil Procedure † as to the service and endorsement of summonses shall apply *mutatis mutandis* to citations under this Act

Penalty on respondent not obeying citation

11 If the respondent shall not obey such citation and comply with every other requirement made upon her or him under the provisions of this Act she or he shall be liable to punishment under section 174 of the Indian Penal Code ‡

Points to be proved on appearance of petitioner

12 On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved—

(1) The identity of the parties

(2) The marriage between the petitioner and the respondent

(3) That the male party to the suit has completed the age of sixteen years and that [illegible] rs

(4) [illegible]

(5) [illegible] peti [illegible] change of rel[illegible]

[illegible] ation had continued for the six [illegible] of the suit

First interrogation of respondent

13 The respondent, if such points be proved to the satisfaction of the Judge shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and if so, what is the ground of such refusal

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge but when the respondent is exempt by law from personal appearance in Court or where the Judge shall in his discretion excuse the respondent from such appearance the interrogations shall be made by Commissioners acting under such commission as hereinafter mentioned

Interrogations by Judge may be public or private

14 Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room

[illegible] which were repealed by Act VII of 1870,
[illegible] * Act VII of 1870 Schedule II, No 14

If any such interrogation take place in open Court the Judge may, so long at it shall continue, exclude from the Court all such persons as he shall think fit to exclude

Procedure when female respondent refuses to cohabit with petitioner

15 If the respondent be a female and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent s answers and of the facts which may have been proved by the petitioner, he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim the parties shall, at such place and time as he shall deem convenient have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select with the veiw of ascertaining whether or not the respondent freely and voluntarily persists in such refusal

Adjournment for a year

Interview

Precedure on expiration of adjournment

16 At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to and if the points mentioned in the section 12 and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent, on being interrogated by the Judge or Commissioners as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner ,

Interrogation of respondent

Decree

and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved

Decree in case of male respondant refusing to cohabit on grounds of petitioner's change of religion

17 If the respondent be a male, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year

At the expiration of such adjournment, the petitioner shall again appear in Court , and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid

Proviso

Provided that if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall *mutatis mutandis*, be the same as in the case of a female respondent

Decree if respondent so refuse in case of unconsummated marriage, either party being *impubes* at time of marriage

18 Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated, and if, in answer to the interrogatories made pursuant to section 13 of this Act the respondent shall refuse to cohabit with the petitioner, and allege, as the ground for such refusal that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid

19 When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such re marriage shall be legitimate any Native law to the contrary notwithstanding

Liberty to parties to marry again

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person

20 In suits instituted under this act the Judge shall order a commission to issue to such persons, whether males or females or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid

Judge to order commission to issue for examination of exempted persons

The provisions of the Code of Civil Procedure shall so far as practicable, apply to commissions issued under this section

21 At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent s refusal or voluntary neglect to co habit with the petitioner, after his or her change of religion and after knowledge *thereof by the* respondent shall be sufficient evidence of the respondent*s desertion or repu* diation of the petitioner, and shall also be sufficient *evidence that such desertion* or repudiation was in consequence of the petitioner s change *of religion unless* some other sufficient cause for such desertion or repudiation be proved by the respondent

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion

22 The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses *shall apply in suits* instituted under this Act

Civil Procedure Code applied

23 If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years or that the *female party to the* suit is or was at the same *time under the age* of thirteen years or that the *petitioner and the* respondent are *cohabiting* as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to *cohabit* with the petitioner the Court shall pass a decree dismissing the suit and stating the ground of such dismissal

Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit

24 If, at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the *respondent* again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be *revived* by summoning the respondent, and upon proof of the former decree *and of* such renewed repudiation or desertion the suit shall re commence at the stage at which it had arrived immediately before the passing of such decree, and after the proofs, interrogations, interview and *adjournment* which may then be requisite under the provisions hereinbefore *contained*, the Judge shall pass a decree of the nature mentioned in the section 16 of *this* Act

Revival of suit after such dismissal

25 If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner s cruelty or adul *tery*, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal

Petitioner's cruelty or adultery to bar suit

A suit dismissed under this section shall not be revived

Male petitioner's cohabitation with one of several wives to bar suit

26 If the petitioner, being a male, has at the time of the institution of the suit two or more wives he shall make them all respondents and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife or that any one of such wives is ready and willing so to cohabit with him the Court shall pass a decree dismissing the suit and stating the ground of such dismissal

The provisions as to revival contained in section 24 of this Act shall apply *mutatis mutandis*, to a suit dismissed under this section

Dissolution of marriage not to affect status or right of children

27 A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent s children (if any) by the petitioner of their status as legitimate children or of any right or interest which they would have had according to the native law applicable to them by way of maintenance inheritance or otherwise in case the marriage had not been so dissolved as aforesaid

Power to Court to award alimony

28 If a suit be commenced under the provisions of this Act and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit the Court may pending the suit order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit and also for her maintenance pending the suit

If the suit be brought by a husband against a wife the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just and having regard to the condition and station in life of the parties

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife

No appeal under Act but Judge may state case raising question whether conversion has dissolved marriage

29 No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act but if at any stage of the suit the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act the Judge if he shall entertain any doubt as to the validity of such defence shall either of his own motion or on the application of the respondent state the case and submit it with his own opinion thereon for the decision of the High Court

Case to state necessary facts and documents and suit to be stayed

30 Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided

Case to [illegible] Judges

31 [illegible] three Judges of the High [illegible] the High Court at any [illegible] and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil

32 If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf

High Court may refer case to Judge for additions or alterations

33 It shall be lawful for the High Court upon the hearing of any such case to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded,

High Court may decide question raised and Judge shall dispose of case accordingly

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall on receiving the same, dispose of the case conformably to such judgment

34 Nothing contained in this Act, shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church *

Saving of Roman Catholic marriages

35 This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the Statute 21 & 22 Vict cap 106 entitled, "An Act for the better government of India †

Extent of Act

THE FIRST SCHEDULE

(See Section 7)

FORM OF PETITION

Stamp ‡

To the Judge of the Civil Court of

The day of 18

The petition of *A B* of

Sheweth —

1 That your petitioner was born or on about the day of 18

2 That your petitioner was on the day of in the year 18 lawfully married to *C D* at

3 [illegible]

years or thereabouts

oner lived and cohabited with his

18

18 your petitioner changed

day he was baptised and became a

6 That on the day of 18 (*at least six months prior to the date of the petition*] the said *C D* deserted your petitioner and has not since resumed cohabitation with him

7 That such desertion was in consequence of your petitioner's said change of religion

8 That there is no collusion nor connivance between your petitioner and the said *C D*

* The remainder of this section was repealed by the Repealing Act (XVI of 1874)
† Certain words repealed by Act XII of 1891, Sch I have been omitted
‡ Certain words were repealed by Act 12 of 1891

Your petitioner therefore prays that your Honour will order the said *C D* to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved

A B

Form of verification

I, A B, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief

THE SECOND SCHEDULE.

(*See Section 9*)

FORM OF CITATION IN ORDINARY CASES

To C D of

[illegible]

you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court is herewith served upon you

And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the Indian Penal Code

Dated the day of 18

(*Signed*) *E F*,
Judge of the Civil Court of .

(*Indorsement to be made after service*)

This citation was duly served by *G H* on the within named *C D* of at on the day of 18

(*Signed*) *G H*

THE THIRD SCHEDULE

(*See section 9*)

FORM OF CITATION IN CASE OF RESPONDENT EXEMPT FROM APPEARANCE IN COURT

To *C D* of

Whereas *A B* of [illegible]

that his [*or* her] marriage is dissolved Now this is to command you that, at the expiration of days [*at least one month*] from the service of this on you, you do hold youself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorized in that behalf under a commission issued by this Court in reference to the said petition, a copy whereof sealed with the seal of the said Court, is herewith served upon you

and take notice that, in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code

Dated the day of 18

(*Signed*) E F
Judge of the Civil Court of

(*Indorsement to be made after service*)

This citation was duly served by *G H* on the within named *C D* of at on the day of 18 .

(*Signed*) *G H*

THE INDIAN NATURALIZATION ACT, 1926

ACT NO VII OF 1926

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 26TH FEBRUARY, 1926

An Act to consolidate and amend the law relating to the naturalization in British India of aliens resident therein

WHEREAS it is expedient to consolidate and amend the law relating to the naturalization in British India of aliens resident therein, It is hereby enacted as follows —

Short title extent and commencement

1 (1) This Act may be called the Indian Naturalization Act 1926

(2) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas

(3) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint

Definitions

2 In this Act unless there is anything repugnant in the subject or context,—

(*a*) British subject means a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914*,

(*b*) 'certificate of naturalization' means a certificate of naturalization, granted under this Act, and

(*c*) minor' means any person subject to the Indian Majority Act, 1875 † who has not attained his majority within the meaning of that Act, or any other person who has not attained the age of eighteen years

Grant of certificate of naturalization

3 (1) The Local Government may grant a certificate of naturalization to any person who makes an applcation in this behalf and satisfies the Local Government—

(*a*) that he is not a minor,

(*b*) that he is neither a British subject or a subject of any State in Europe or America or of any state of which an Indian British subject is prevented by or under any law from becoming a subject by naturalization

(*c*) that he has during a period of not less than five years immediately preceding the date of the application either resided in British India or been in the service of the Crown under the Government

(*d*) that he is of good character

(*e*) that he has an adequate knowledge of a language which has been declared by the Local Government, by notification in the local official Gazette, to be a principal vernacular of the province, and

(*f*) that he intends if the application is granted to reside in British India or to enter or continue in the service of the Crown under the Government

Provided that nothing in clause (*c*) or clause (*f*) shall apply in the case of a woman who was a British subject previously to her marriage to a person not a British subject and whose husband has died or whose marriage has been dissolved.

(2) Nothing in this section shall be deemed to prevent the grant of a certificate of naturalization to any person to whom a certificate of naturalization has been issued under the Indian Naturalization Act, 1852 ‡

* 4 & 5 Geo 5, c. 17 † IX of 1875

‡ Act XXX of 1852

Contents and form of application

4 (1) Every application for a certificate of naturalization shall be in writing and shall state, to the best of the knowledge and belief of the applicant —

(a) his age,
(b) his place of birth,
(c) his place of residence,
(d) his profession, trade or occupation,
(e) full particulars regarding his qualifications in respect of the matters referred to in clauses (a) to (f) of sub section (1) of section 3,
(f) whether he has at any time previously applied for the grant of a certificate of naturalization under the British Nationality and Status of Aliens Act, 1914,* or the Indian Naturalization Act, 1852,† or this Act,
(g) whether any such application has been rejected,
(h) whether any such certificate has been granted to him, and
(i) whether any such certificate granted to him has been revoked

(2) Every such application shall be signed by the applicant and shall be accompanied by an affidavit sworn by him verifying that the statements contained therein are true to the best of his knowledge and belief

(3) The local Government shall satisfy itself as to the truth of the statements contained in the application, and for this purpose may cause to be made such further inquiry, if any, and may require such further evidence, if any either by affidavit or otherwise, as it thinks necessary

Grant of certificate

5 (1) If the Local Government is satisfied that the applicant is qualified under section 3 for the grant of a certificate of naturalization and is otherwise a fit person
for the grant a certificate reciting the qualifica
tions of and conferring upon him all the rights
privilege ation under this Act except such
rights, privileges or capacities, if any, as may specifically be withheld by the certificate

(2) Any such certificate may if the applicant so requests include the name of any minor child of the applicant not being by birth a British subject, who was born before the date of the certificate and is for the time being resident in British India and under the control of the applicant, and shall grant to any child so included all the rights, privileges and capacities of naturalization under this Act, except such rights privileges or capacities if any, as may specifically be withheld by the certificate

(3) The grant of a certificate of naturalization shall be in the absolute discretion of the Local Government and no appeal shall lie from any refusal to grant any such certificate or to include in any such grant any particular right, privilege or capacity

Oath of allegiance

6 Every person to whom a certificate of naturalization has been granted shall within thirty days from the date of the grant thereof, take and subscribe the following oath, namely —

'I, A B, of do hereby swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King Emperor of India, His Heirs and Successors"

Provided that the Local Government may extend the time allowed under this section in any case in which it is satisfied that failure to take and subscribe the oath within that time was due to sufficient cause

* 4 & 5 Geo 5 c 17

† XXX of 1852

7 (1) No certificate of naturalization shall have effect until the person to whom it is granted has taken and subscribed the oath prescribed by section 6, but upon the taking and subscribing of such oath such person, and any child of any such person* who has been included in the certificate under sub section (2) of section 5, shall, when in British India, be deemed to be British subjects and be entitled to all the rights, privileges and capacities of a British subject born within British India, except such rights privileges or capacities if any, as may have been withheld from them respectively by the certificate and shall within British India be subject to all the obligations, duties and liabilities of a British subject '*and the wife of any such person to whom a* certificate of naturalization is granted after the commencement of the Indian Naturalization (Amendment) Act, 1935 shall, if not already a British subject, in like manner be so deemed and be so entitled and so subject, if within one year, or so longer period as the Local Government may in special circumstances allow, *from the date of the taking and subscribing of such oath by her husband,* she makes to the Local Government a declaration that she desires to be deemed to be a British subject '†

Effect of grant of certificate and taking of oath

(2) When the person to whom a certificate of naturalization has been granted [illegible] ed by section 6, any wife thereafter [illegible] o such person shall, if she or he [illegible] aforesaid at the date of the marriage or birth as the case may be, retains any rights, privileges or capacities of a British subject under this Act, be entitled to the same rights privileges and capacities and be subject to the same obligations duties and liabilities, to which such person aforesaid was at that date entitled and subject

8 (1) Where the Local Government of the province in which a person to whom a certificate of naturalization has been granted under this Act, or the Indian Naturalization Act, 1852 ‡ resides or, in the case of any such person who is not for the time being resident in British India, the Local Government, by which such a certificate was granted to such person is satisfied that the certificate was obtained by false representation or fraud or by concealment of material circumstances, or that the person to whom the certificate has been granted has shown himself by act or speech to be disaffected or disloyal to His Majesty, the Local Government shall, by order in writing, revoke the certificate

Revocation of certificate

(2) Without prejudice to the foregoing provisions such Local Government shall, by order in writing, revoke such a certificate of naturalization as aforesaid *in any case in which it is satisfied that* the person to whom the certificate was granted—

(a) has, during any war in which His Majesty is engaged, unlawfully traded or communicated with the enemy or with a subject of an enemy state, or been engaged in or associated with, any business which is to his knowledge carried on in such a manner as to assist the enemy in such war, or

(b) has, within five years of the date of the grant of the certificate, been sentenced by any Court in His Majesty's dominions to transportation or to penal servitude or to imprisonment for a term of not less than twelve months or to pay a fine of not less than one thousand rupees, or

(c) was not of good character at the date of the grant of the certificate ; or

(d) has since the date of the grant of the certificate been for a period of not less than seven years ordinarily resident out of His Majesty's dominions otherwise than as a representative of a British subject firm or company carrying on business, or of an institution established, in His Majesty's dominions, or in

* Certain words after this repealed by Act I of 1935 have been omitted.
† Inserted by Act I of 1935 ‡ XXX of 1852

the service of the Crown, and has not maintained substantial connection with His Majesty's dominions, or

(e) remains according to the law of a state at war with His Majesty, a subject of that state,

and that the continuance of the certificate is not conducive to the public good

(3) Nothing in this section shall be deemed to authorise the revocation by one Local Government of a certificate granted by another Local Government without the concurrence of that other Local Government, or, if that Local Government refuses to concur, of the Governor General in Council

(4) The Local Government may, if it thinks fit, before making an order under this section, refer the case for such inquiry as is hereinafter specified, and, in any case to which sub section (1) or clause (a) clause (c) or clause (e) of sub section (2) applies, the Local Government shall by notice given to or sent by post to the last known address of, the holder of the certificate gives him an opportunity of claiming that the case be referred for such inquiry, and, if the holder so claims in accordance with the notice, the Local Government shall refer the case for inquiry accordingly

(5) An inquiry under this section shall be held by such person or persons and in such manner as the Local Government may direct in each case

(6) Where a certificate is revoked under this section, the revocation shall have effect from such date as may be directed by the Local Government, and thereupon the certificate shall be given up and cancelled, and any person who, without reasonable cause the burden of proving which shall lie upon him, fails to give up his certificate within one month from the aforesaid date, shall be punishable with fine which may extend to one thousand rupees

(7) For the purposes of this section, any person who has acquired any of the rights privileges or capacities of naturalization under sub section (2) of section 5 or sub section (2) of section 7 by reason of the grant to his parent of a certificate of naturalization may after he has attained majority be deemed to be a person to whom a certificate of naturalization has been granted

Effect of revocation of certificate

9 (1) Where a certificate is revoked under section 8, the former holder thereof shall cease to be deemed to be a British subject

(2) On such revocation the Local Government may by order in writing direct that the wife and minor children (or any of them) of the person whose certificate is revoked shall cease to be deemed to be British subjects, but where no such direction is made, the status of the wife and minor children of the person whose certificate is revoked shall not be affected by the revocation

"Provided that no such order shall be made in the case of a wife unless by reason of the acquisition by her husband of a new nationality she has also acquired that nationality *

Provided 'further' * that in the case of a wife who was at birth a British subject no such order as aforesaid shall be made, unless the Local Government is satisfied that, if she had held a certificate of naturalization in her own right the certificate could properly have been revoked under section 8, and the provisions of that section as to referring cases for inquiry shall apply to the making of any such order as they apply to the revocation of a certificate

Declaration of alienage

10 (1) A declaration of alienage in such manner as may be prescribed by rules made under this Act may be made —

(a) within one year of his attaining majority, by any child who has acquired any of the rights, privileges or capacities of naturalization under sub-section (2) of section 5, or sub section (2) of section 7, or

(b) within six months from the date of the revocation of a certificate under section 8 or of the death of, or of the dissolution of her marriage with the

* Inserted by Act I of 1935

holder of any such certificate as is therein referred to by the wife of the person whose certificate has been revoked or who has died, or whose marriage to her has been dissolved as the case may be

(2) Where a declaration of alienage has been made in the manner aforesaid the person making the same and the wife of any such person and any children of any such person who are minors and are not by birth British subjects shall cease to be deemed to be British subjects

*Provided that the wife of any such person shall not cease to be deemed to be a British Subject under this sub section, unless by reason of the acquisition by her husband of a new nationality she has also acquired that nationality *

Inquiries

11 Every person making an inquiry under the orders of a Local Government under sub section (3) of section 4, and every person appointed to hold an inquiry under sub section (5) of section 8 shall be deemed to be a public servant within the meaning of the Indian Penal Code † and shall for the purposes of such inquiry have the same powers as are vested in a Court under the Code of Civil Procedure 1908 ‡ when trying a suit, in respect of the following matters —

(i) enforcing the attendance of any person and examining him on oath

(ii) compelling the production of documents and material objects, and

(iii) issuing commissions for the examination of witnesses,

and every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 add 228 of the Indian Penal Code †

Oaths and affidavits

12 (1) All oaths and affidavits for the purposes of this Act shall be sworn before a Magistrate or such other person as may be appointed in this behalf by the Local Government

(2) The Magistrate or other person by whom an oath of allegiance is administered under section 6 shall grant to the person making the same a certificate in writing of his having taken and subscribed such oath and of the date of his taking and subscribing the same and shall forward to the Local Government the oath so taken and subscribed together with a copy of such certificate

Power to make rules

13 (1) The Local Government may with the previous sanction of the Governor General in Council, by notification in the local official Gazette, make rules to give effect to the provisions of this Act

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following matters namely —

(a) the form or forms in which certificates of naturalization shall be granted and the manner in which they shall be recorded,

(b) the manner in which declarations of alienage shall be made and recorded,

(c) the recording of oaths of allegiance, and

(d) the fees which may be imposed for the issue of any certificate, whether of naturalization or otherwise granted under this Act

Limitation to the grant of naturalization under this Act

14 Nothing contained in this Act shall be deemed to entitle to any of the rights privileges or capacities of a British subject the child of any person who is himself so entitled by reason only of the inclusion of his name in a certificate of naturalization under sub section (2) of section 5 or of the grant of a certificate of naturalization to his parent

15 Repealed by Act XII of 1927

THE SCHEDULE

Repealed by Act XI of 19 7

* Inserted by Act I of 1935

† XLV of 1860

‡ V of 1908

THE NEGOTIABLE INSTRUMENTS ACT, 1881

ACT NO.XXVI OF 1881 *

RECEIVED THE G.-G'S ASSENT ON THE 9TH DECEMBER, 1881

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques

Preamble

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques, It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

Short title

1 This Act may be called The Negotiable Instruments Act, 1881

Local extent

It extends to the whole of British India, but nothing herein contained affects the Indian Paper Currency Act, 1871 section 21,† or affects any local usage relating to any instrument in an Oriental language·

Saving of usages relating to hundies, &c

Provided that such usages may be excluded by any words in the body of the instrument, ... the parties thereto shall ... and it shall come into ... March, 18..2

... Local usage relating ... The party relying ... M 526=13 M L J

Negotiable Instruments—The Negotiable Instruments Act deals only with promissory notes and bills of exchange and the distinction between these instruments, ... f to pay, in a bill of ex... s the responsible executant ... tion by ano her—*Radha* v ... when deciding in equity ... of Contract Act A I R 1933 Rang 131 The Act does not apply to hundis 13 Lah 800

2 [*Repealed by Act XII of 1891*]

Interpretation clause

3 In this Act—

"Banker"

"banker" includes also persons or a corporation or company acting as bankers and

"Notary public

"notary public" includes also any person appointed by the "Local Government"‡ to perform the functions of a notary public under this Act

Notes—*Vide*, 29 A 773, 31 C. 519

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* Declared in force in Upper Burma (except the Shan States) by Act 13 of 1898, s 4, and in British Baluchistan by Reg 2 of 1913, s 3

† See now Act 10 of 1923

‡ The words within quotations have been substituted by Act 4 of 1914

CHAPTER II

OF NOTES, BILLS AND CHEQUES

"Promissory note"

4 A "promissory note" is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument

Illustrations

A signs instruments in the following terms —
(*a*) "I promise to pay B or order Rs 500
(*b*) "I acknowledge myself to be indebted to B in Rs 1,000 to be paid on demand, for value received"
(*c*) "Mr B I O U Rs 1,000
(*d*) "I promise to pay B Rs 500 and all other sums which shall be due to him"
(*e*) "I promise to pay B Rs 500, first deducting thereout any money which he may owe me"
(*f*) "I promise to pay B Rs 500, seven days after my marriage with C"
(*g*) "I promise to pay B Rs 500 on D s death provided D leaves me enough to pay that sum
(*h*) "I promise to pay B Rs 500 and to deliver to him my black horse on 1st January next

The instruments respectively marked (*a*) and (*b*) are promissory notes The instruments respectively marked (*c*), (*d*) (*e*), (*f*) (*g*) and (*h*) are not promissory notes

Promissory note—A promissory note not made payable to any other person than the payee that is not made payable to "order" or "bearer" is not a negotiable instrument 1 A 732 A *pre existing* debt affords a consideration for promise to pay it A W N 1885 213 In order to be promissory note the instrument must contain in words an unconditional *undertaking* to pay a sum of money. A mere acknowledgment of receipt of money or indebtedness, and an admission that the executant was accountable to the other party will not constitute the document as a promissory note, 2 M W N 1911, 380=10 M L T 538, 3 Bom L R 839 Deposit of title deeds as a collateral *security does* not make a promissory note none the less a negotiable instrument 3 M L J 225 When on the face of a document it is a promissory note it is *not necessary to show* that the maker of the document intended to make a promissory note 8 Ind Cas 352 A document containing a promise to pay money and paddy is not a promissory note 4 M 296 (F B) Where a document contains a request to *borrow* a *certain* sum of money on certain conditions it is not a promissory note 13 B *669* When there is no express promise to pay but an acknowledgment of liability it is not a promissory note 22 B 986 Where a promissory note is *executed in adjustment* of disputes and where the dispute was settled long before by a decree of Court there is no *consideration* for the note 7 M H C R 200 A promissory note does not lose its character as such merely because it contains a promise to pay *at a certain place* 4 Bom L R 428 A document whereby one person promises *to* pay another a fixed sum every month is so vague and indefinite in its terms that [illegible] g within the category of promissory notes [illegible] M L J 172=A I R. 1933 Mad 376 [illegible] their order to bearer is essential 64 M [illegible] 210=A I R 1933 Mad 305, see also 1931 A L J 230=A I R 1931 All 302, 66 M L J 315, 67 M L J 695, A I R 1934 Lah 93 A deed narrated that partnership was settled and certain amount was found due from the defendant to the plaintiff and the defendant promised to pay that sum to the plaintiff *wakte zarurat* The word pronote was not used in the document *Held* that the deed was a pronote 86 Ind Cas 482 A document which recites that the executant has a certain sum of money belonging to another and by wh[illegible] s not a promissory note [illegible] ed by a debtor contained t[illegible] his sum (interest at—1 am[illegible] "undertaking to pay" wi[illegible] 21 M

49=7 M L J 291 A letter requesting loan does not constitute a promissory note 23 M 156 (Notes) But where there are terms of a promissory note it is a promissory note 16 M 283 One of the most essential characteristics of a promissory note is certainty—certainty both as regards the person by whom and to whom payment is to be made appears to be insisted on for reasons of public policy for any uncertainty in such matters would tend to restrict credit and to hamper commerce 58 C 752=35 C W N 53

A promissory note executed before the passing of Act V of 1914 and made payable to payees in the alternative is not a negotiable instrument within the meaning of this section 59 Ind Cas 943=13 L W 183 See also (1920) M W N 600=28 M L T 262

Hundi—Where the analogy between native *hundi* and English bills of exchange is complete the English law is applicable—*Sumboo Nath* v *Judunath*, 2 Hyde 259. The English law of prompt notice "by return of post is inapplicable to cases of native *Hundis* drawn by natives upon natives, and endorsed by natives—*Radha* v *Chunder Nath*, 6 W R 301=Coryton 88 But some notice of dishonour should be given to the immediate endorser or drawer within a reasonable time 9 B L R App 1=17 W R 44 See also 2 C L R 429

Shahjog Hundi—is payable to a respectable person 1 A L J 251=26A 493 It is a *hundi* which passes from hand to hand on delivery and requires no endorsements 28 Bom L R 897, but see 33 P L R 19=A I R 1932 Lah 312

"Bill of exchange"

5 A "bill of exchange is an intrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument

A promise or order to pay is not "conditional within the meaning of this section and section 4 by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain

The sum payable may be 'certain" within the meaning of this section and [illegible] or is payable at an indicated rate [illegible] exchange and although the instru[illegible] f an instalment, the balance unpaid shall become due

"The person to whom it is clear that the direction is given or that payment is to be made, may be a "certain person," within the meaning of this section and section 4, although he is mis-named or designated by description only' *

[illegible]
low [illegible]
=2 [illegible]
orie [illegible]
notes and are subject to local usages and are unaffected by the provisions of the Negotiable Instruments Act In a suit for *hundi*, the first essential is to ascertain whether the *hundi* is a promissory note or a bill of exchange *Radha* v *Hiralal* [illegible]

127 Ind Cas 575 The bearer of a *Shahjog hundi* although a minor, is entitled to sue on the *hundi* 90 Ind Cas 685

'Cheque'

6 A "cheque' is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand

Notes—Post dated cheques are cheques and after the due dates may be used upon as cheques 90 Ind Cas 59, 1934 A L J 892

* The words quoted have been substituted by Act II of 1885, s 2 for the following "When acceptance is refused, and the bill is protested for non acceptance"

'Drawer "Drawee'

7 The maker of a bill of exchange or cheque is called the "drawer" the person thereby directed to pay is called the "drawee"

"Drawee in case of need"

When in the bill or in any ... thereon the name of any person ... to be resorted ... on is called ... "drawee in case of need"

"Acceptor"

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf he is called the "accepter"

"Acceptor for honour"

"When a bill of exchange has been noted or protested for non acceptance or for better security",* and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour"

'Payee"

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee"

Notes—As regards the sufficiency of oral acceptance, *Vide* 1934 All. 129, see also 51 Ind Cas 60 An oral acceptance of a bill does not make the so-called acceptor liable to the holder of the bill 127 Ind Cas 214 Mere writing of figures on the *hundi* cannot amount to signing of assent by the drawee unless it can be proved that it amounted to acceptance according to mercantile usage of the locality 127 Ind Cas 214 Where the payee signs his name and makes it payable to some other person that other person does not become the payee 93 Ind Cas. 619 Acceptance must be written upon hundi or bill of exchange A I R 1933 Nag 389

'Holder"

8 The 'holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto

Where the note bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction

Holder of promissory note—An endorsee of a promissory note, to whom the endorsement has been legally made followed by delivery to him of the note, is the holder of the note 2 C W N 286 But where there is no consideration for the endorsement he is not a holder in due course 14 Ind Cas 813 But where the ... 5 L B R ... the payee be the real ... J 126=65 Ind Cas 785 A forged endorsement is a nullity and conveys no title A holder under such a forged endorsement is not a holder in due course 15 S L R 93, see also 20 M L J 144=7 M L T 85

When a Hindu son lends his father's money in his own name with his father's consent he is the holder 57 Ind Cas 881 Under s 37 of the Negotiable Instru ... holder ... of a holder under the Act, on the ground ... *benamidar* 30 M 8... endorses a bill to ... bill without collecti... endorsee, the holde...

* The words quoted have been substituted by Act II of 1885, s 2 for the following. "... acceptance is refused, and the bill is protested for non acceptance

to receive payment
the endorser and
it puts him in a
endorsee for collec
the *definition of a*
8 means any pers
amount due therefor from the parties thereto, that is to say, the person so entitled on the face of the bill 17 M L J 414=30 M 44

9 "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque, if "payable to bearer," or the payee or endorsee thereof, if "payable to order"* before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title

"Holder in due course"

Holder in due course—To be a holder in due course, it is necessary that one must have for consideration, become payee or endorsee, before the amount mentioned in the note becomes payable U B R (1897 1901) Vol II 523 Where a negotiable instrument bears a forged endorsement no person can claim a title to the instrument through such endorsement because a forged endorsement is a nullity and it must be taken as if no such endorsement was on the instrument 36 C 235=1 Ind Cas 929, 3 A L J 203=A W N 1906 77=24 A 428 An endorsee
consideration for
it is not a holder
that payment of a pronote was demanded or that it was over due before it is endor
made before the pronote becomes
Γ 237=3 Ind Cas 428 Where the,

the endorser the presu
is rebutted 1 Bur L J 40 A perso
suspicious circumstances is not a holde
537 A person cannot sue upon a
32 Ind Cas 821 It is not open to
demand to plead against a holder in due course that he had paid the money to the payee before
Hundi must
course that
of s 9 by reas
with lien on
L R 536
80 Ind Cas
become a holder for value 1928 All 66 Real owner is not affected
disclosed to the maker and if the maker does not make any payment to the holder and get a discharge from him 126 Ind Cas 741 No one can sue on a negotiable instrument as holder unless he is named therein as the payee or becomes entitled to it as endorsee or bearer 122 Ind Cas 345 Unless a person proves that he is a holder in due course within the meaning of s 9 he cannot have any higher or
the person
nt tle that
resumption
d if maker
sideration
1933 A L J 1241

10 "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith
to any person in posses
reasonable ground for
t of the amount therein
mentioned

"Payment in due course"

* The words within quotations have been substituted by Act 8 of 1919

Notes—Where the drawees of Shahjog *Hundi* made payment although the drawer had notified them by a telegram to stop payment until further instructions payment by them was not a payment in due course within the meaning of the section 26A 443=1 A L J 254=A W N 1904 100

11 A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in British India, shall be deemed to be an inland instrument

Inland instrument

Notes—[illegible] 'and or a foreign bill An inland [illegible] be both drawn and payable [illegible] lia upon some person resident [illegible] But unless the contrary appears on the face of the bill the holder may treat it as an inland bill *Halsbury*, Vol II p 475 See also *Hirschfield* v *Smith* (1865) L R 1 C R 340 A bill drawn upon a resident in British India is an inland bill wherever it may have been drawn in or out of British India 129 Ind Cas 190

12 Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument

Foreign instrument

Notes—A bill drawn payable in France, though drawn in England is a foreign bill, and a notice of dishonour according to the French law, is sufficient *Hirschfield* v *Smith*, L R 1 C P 340=35 L J C R 177

13 (1)* A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer

"Negotiable instrument"

Explanation (*I*)—A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable

Explanation (*II*)—A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank

Explanation (*III*)—Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of the specified person, and not to him or his order, it is nevertheless payable to him or his order at his option

"(2) *A negotiable instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees"

Notes—A promissory note payable to a specified person or order is a negotiable intrument and is negotiable by endorsement 55 Ind Cas 718 Pronote not payable to person or his order if negotiable, *Vide* A I R 1925 Sind 9 Where a *hundi* drawn in favour of payee or bearer is endorsed by the payee to a named person it ceases to be a bearer *hundi* and it can be paid only to the endorsee named 27 Bom L R 34—86 Ind Cas 118 A payee of a promissory note is the only person who can sue upon it 36 Bom L R 807=A I R 1934 Bom 356 Where a promissory note contained no agreement to pay interest and the agreement to pay interest at 2 per cent was [illegible]

[illegible] 300 But now see explanation I See in this connection, 22 Ind Cas 861, 7 M L J 231 Deposit of title deeds as a collateral security does not make a promissory note the less a negotiable instrument. 17 M 85 Where a demand note does not mention the payee, it is not a negotiable instrument

* Section 13 has been re numbered 13 (1) and clause (2) has been added by Act 5 of 1914

116 Ind Cas 111 Debentures issued by the Bombay Municipality are not negotiable instruments in the absence of evidence of custom of the market 112 Ind Cas 824

Clause (2) —The *Jog Hundis* payable alternatively to one of several payees are negotiable instruments 43 M L J 480=68 Ind Cas 921=111 Ind Cas 686

Negotiation

14 When a promissory note, bill of exchange or cheque, is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated

Notes —*Vide* 40 Ind Cas 86, 11 M 250, 17 M L J 393=3 M L T 17, 14 Bom L R 25 When it is assigned without endorsement such assignment must be in writing 17 M L J 393 Government promissory notes cannot be assigned without endorsement 24 B 65 (71)

Indorsement

15 When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same and is called the "indorser"

Notes —A mere written acknowledgment of receipt of money due under a promissory note does not fall within the provisions of ss 15 and 16 —13 L W 183=59 Ind Cas 913 As regards signature on the back *vide* A I R 1925 Sind 9, 70 Ind Cas 282

Indorsement "in blank and in full

'Indorsee'

16 * (1) If the indorser signs his name only, the indorsement is said to be "in blank" and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of a specified person, the indorsement is said to be 'in full and the person so specified is called the "indorsee of the instrument

(2) ' The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee '

Notes —If the indorsement con
the endorsee though it may not
direction to pay within the meanir
410 Sub section (2) protects the
the indorsee is not genuine 93 Ind Cas 619

Ambiguous instruments

17 Where an instrument may be construed either as a promissory note or bill of exchange the holder may, at his election treat it as either and the instrument shall be thenceforward treated accordingly

Notes —When the holder of an instrument, "ambiguous within the meaning of the expression as used in s 17 elects, to treat it as a bill of exchange he cannot subsequently elect to treat the same as a promissory note 15 B 267 See also 58 Ind Cas 313 Where a hundi is ambiguous about its being either a pronote or a bill of exchange the holder is entitled to treat it as either 129 Ind Cas 305 Right of election given by s 17 is not taken away by stamp Act s 6 63 M L J 548=A I R 1932 Mad 765

Where amount is stated differently in figures and words

18 If the amount undertaken or ordered to be paid is stated differently in figures and in words the amount stated in words shall be the amount undertaken or ordered to be paid

Notes— It is customary for bills and notes to have the amount written in figures at the top of the instrument and in words in the body of the instrument Where there is discrepancy between the two the sum denoted by the words is the amount payable and evidence cannot be adduced to show that in fact there is a mistake made

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* Section 16 has been numbered 16 (1) and clause 2 has been added after it by Act 5 of 1914

in omitting words in the body of the instrument *Saunderson* v *Piper*, (1839) 3 Bing (N C) 425,"—*Halsbury* Vol II, p 466 The original purpose of this marginal note was that the amount of the instrument might strike the eye immediately and be a note, index or summary of the contents *Gorrand* v *Lewis*, (1882) 10 Q B D 1 But marginal figures may be helpful in supplying the omission *R* v *Elliot*, 1 Leach, C C 210, *Henry* v *Addy*, (1910) 2 I R 688, 11 L B R 439

Instruments payable on demand

19 A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand

Notes —A bill of exchange is payable on demand 45 Ind Cas 22

Inchoate stamped instrument

20 Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Notes —The estoppel arising from s 20 cannot be applied to the paper or papers which the signature covers 54 Ind Cas 3 So long as the amount of a pronote can be found out from an instrument itself without extraneous aid, the omission to state in the body of the pronote does not vitiate its character as such 1 Bur L J 172 Where a person gives another a blank *hundi* with his signature he *prima facie* authorises the latter to fill it up and give to the world the bill as accepted by him 59 Ind Cas 657 A payee can fill a blank in an inchoate Instrument and sue on it himself after filling it or endorse it to some one 17 Ind Cas 915

"At sight"
"On presentment"
"After sight"

21 In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non acceptance, or protest for non acceptance

Notes —In the case of a note the phrase 'after sight' means after exhibition thereof to the maker for ...
Kenison, (1810) 2 Taunt ...
v *Nuttal* (1834) 6 C, & ...
of exchange *Halsbury*, ...
means after acceptance or noting for non acceptance or protest for non acceptance. *Vide Campbell* v. *French*, (1795) 6 Term Rep 300, *Williams* v *Germine*, (1827) 7 B & C 468; *Sutton* v *Coomer* (1827) 7 B & C 416, 418

"Maturity"

22 The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable

Notes —By this section a bill of exchange which is not expressed to be payable on demand at sight or on ... day after the day on which it is expressed ... L J 1166=39 A. 86 See Also 27 Ind Cas ... The term maturity used in this section c... note payable on demand 130 Ind Cas 477

23 In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated or presented for acceptance or sight, or noted for non acceptance, or protested for non acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated *number of months after sight and has been accepted for honour, with the day* on which it was so accepted If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month

Calculating maturity of bill or note payable so many months after date or sight

Illustrations

(*a*) A negotiable instrument, dated 29th January 1878, is made payable at one month after date The instrument is at maturity on the third day after the 28th February, 1878

(*b*) A negotiable instrument, dated 30th August 1878 is made payable three months after date The instrument is at maturity on the 3rd December 1878

(*c*) A promisssory note or bill of exchange, dated 31st August 1878, is made pay able three months after date The instrument is at maturity on the 3rd December, 1878

Notes —49 Ind Cas 191

24 In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non acceptance or on which the event happens shall be excluded

Calculating maturity of bill or note payable so many days after date or sight

Notes —Where an instrument is payable at a fixed period after date after sight or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to beg n to run and by including the day of payment *Bills of Exchange Act*, 1882 (45 & 45 Vict c 61) s 14 (2); see also *Campbell* v *French*, (1795) 6 Term Rep 300

25 When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceeding business day

When day of maturity is a holiday

Explanation —The expression ' publ c holiday includes Sundays, New Year s day Christmas day • if either of such days falls on a Sunday the next following Monday , Good Friday and any other day declared by the Local Government by notification in the official Gazette to be a publ c holiday

English law —When the last day of Grace falls on Sunday Christmas day, Good Friday or a day appointed by Royal proclamation as a public fast or thanks giving day the instrument is due and payable on the preceding business day When the l ... Good Friday) under ... when the last ... lay the instru- ... II p 447

CHAPTER III.

Parties to Notes, Bills and Cheques

26 Every person capable ... to the la to which ... bill of exchange or cheque

Capacity to make &c, promissory notes, etc

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself

Minor

Nothing herein contained shall be deemed to empower a corporation to make, endorse, or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered

Joint family—The manager of a joint Hindu family is not its agent but represents the family in all its dealings with outsiders and on the negotiable instrument drawn by the manager the other members would be liable 44 A 593=20 A L J 233, see also 41 C L J 535=88 Ind Cas 1075 Maker alone is liable on the note 128 Ind Cas 43

27 Every person capable of binding himself or of being bound, as mentioned in section 26 may so bind himself or be bound by a duly authorized agent acting in his name

Agency

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal

An authority to draw bills of exchange does not of itself import an authority to indorse

Notes—Agent in ss
within the meaning of
Trustee of a temple is n
a firm liable, the name of the firm need not be written immediately above the signature of the person signing the instrument 106 Ind Cas 741 The principal can only be made liable through his agent when he signs as agent and an undisclosed principal can not be sued on the instrument 118 Ind Cas 673, see also 115 Ind Cas 400 A company is not liable for the signature of an unauthorized managing agent on a promissory note 108 Ind Cas 758 The section has no application where a person who is not a party to a promissory note or other instrument is sought to be made liable in respect of the money due thereunder in consequence of an obligation cast on him by his personal law in respect of such debt 23 M 597 Where the *Karta* of a family borrows money on promissory notes for the purpose of a joint family business or to meet a joint family necessity the creditor can recover the money from all the members of the joint family although they are not all parties to the note 11 C W N 139 Under this section, a principal can only be made liable, through his agent on a negotiable instrument, when the agent acts on the principal's name, *i e*, when he signs as agent 30 M 88 (F B) There is nothing to show that the ordinary law of agency stated in s 226, Contract Act, is applicable to negotiable instruments 40 M 1171

28 An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument except to those who induced him to sign upon the belief that the principal only would be held liable

Liability of agent signing

Daskat—The term daskat means that a person signing a document signed as managing clerk on behalf of the principal 2 S L R 11

Scope—Where the maker of a negotiable instrument does not indicate that he
locument itself indicating that the
the executant is personally liable
lose the name of his principal he
of a person or firm
upon a negotiable instrument must be so
it clear on any fair interpretation thereof that
663 (P C) The provisions of this sectior
agent of a firm executes a promissory note expressly stated in the body of the note that the debt was to be made against the firm and signed the note prefixing the initials of the firm to his name 8 L W 622 The principle of this section is applicable to the case of a payee (1917) M W N 344 This section does not apply only to negotiable instruments written in English but also to documents in the vernacular (1913) M W N 1003=14 M L T 502 According to English

law, words should be added to the signature indicating that the executant signs for and on behalf of a principal But the Indian Act does not require this, but only
body of the document, that
M L T 367=(1912) M W N
isee induces the executant of
e third party only would be
ile 85 Ind Cas 457 In the case of an agent the question under this section is whether the words are sufficiently unequivocal to indicate that he has not made himself personally liable 92 Ind Cas 805=50 M L J 125, see also 4 Rang 551, 53 M L J 814 The language of section 29 is different from that of section 28 in that there must be express word limiting liability and such liability can only be limited to the extent of the assets of the deceased Where section 29 specifically applies to a given set of facts the principle of section 28 can not be invoked 30 M L J 125 This section does not apply where the suit is brought not on the promissory note but on the consideration In such a case the suit can not be maintained 27 N L R 324 When a bill of exchange is accepted by an agent of the drawee the acceptance is good The hand that holds the pen is immaterial, if in fact there is authority to sign 129 Ind Cas 305 Where a promissory note has been signed personally by all partners of a
of the partners in firm's name as insolvent and
will not absolve the other partners of personal
100 Ind Cas 277 Under s 28, it is sufficient
excluded 92 Ind Cas 805

29 A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such

Liability of legal representative signing

Notes —*Vide* 85 Ind Cas 457=A I R 1925 Mad 371, 50 M L J 125, 47 M L J 765 30 Bom L R 1407.

30 The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to or received by, the drawer as hereinafter provided

Liability of drawer

Notes —A member of a Hindu family whom it is sought to make liable by a suit on a *hundi* drawn by the manager of the family is entitled to urge that no notice of dishonour had been given to the manager (drawer) so as to make the latter liable under s 30 of the Act 20 B 488 When the accepter of a *hundi* payable at sight
ree
ver
to
tice
of the dishonour till after 10 days *Held* that the conduct of the holder discharged the drawer from his liability under the *hundi* according to the terms in ss 30, 30 and 86 of the Act 12 C W N 644=8 C L J 163 It is plain from the terms of ss 30 and 93 of the Act that notice of dishonour should be given to the drawer of a *hundi* to give the plaintiff a cause of action and notice can only be dispensed with under the circumstances mentioned in s 98 30 C 977=7 C W N 878, see 96 P W R 1911 In a suit by the holder of a dishonoured *hundi* where no notice of dishonour has been given to the drawer the burden of proving that the party charged could not suffer damage for want of notice is on the plaintiff and there should be a definite issue on the point 173 P L R 1911 see also 30 M L J 369=39 M 965 Where *hundis* were drawn in favour of Bank and Railway receipts for goods consigned to the drawee were handed over to the Bank which through mistake handed over the Railway receipts to the drawer before acceptance of the *hundis* which were subsequently dishonoured by the drawee *Held*, that the loss of this collateral security did not affect the right of the bank to recover on the *hundis* from the drawer *under s 30 of the Act 30 Ind Cas 15 Notice of dishonour should be* given as soon as the bill is dishonoured The omission to give it discharges the persons who are entitled to such notice 116 Ind Cas 887

Drawers of bills of exchange who discount them with a Bank are bound in the case of dishonour by the acceptors, to compensate the holder for value that is the

bank, unless they the drawers can show that when they discounted the bills they bargained that the transaction should be without recourse 54 I A 317=32 C W N 33=A I R 1927 P C 195

Liability of drawee of cheque

31 The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default

Notes—The remedy of a holder of a cheque that has been dishonoured is against the drawer and not against the drawee who refuses payment as there is no privity of contract between them U B R (1902 03) Vol II Civil Negotiable Instrument 5 Bank mak ng payment through mistake in respect of cheque coun ... 127 Ind Cas 223, ... di till he has accept ... to show that drawee ... dorsee of a *hundi* can if they choose sue the opposite party on the *hundi* which has not been honoured or to sue for compensation under s 32 and 117 cl (c) 107 Ind Cas 218=A I R 1928 Sind 96

Liability of maker of note and acceptor of bill

32 In the absence of a contract to the contrary the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand

In default of such payment as aforesaid such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default

Notes—Where the payee of a promissory note is only a *benamidar* he cannot sue against the drawer 7 M L J 64 The general rule is that the acceptor of a bill ...

... of a bill due or accepted it the *onus* is upon *him to get rid* of his liability, and secondly except under peculiar circumstances the proof of which lies upon the defendant a man who signs a bill *is presumed to be* liable for the whole amount appearing on the face of the document 36 Ind Cas 996

Only drawee can be acceptor except in need or for honour

33 No person except the drawee of a bill of exchange, or all or some of several drawees or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance

Notes—Where a person against whom a bill of exchange is drawn by name, accepts the bill for or on behalf of a ... no valid acc... ...member there is ... Bom 252 ... 85=A I R 1925 ... 1928 Sind 50

Acceptance by several drawees not partners

34 Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority

Liability of indorser

35 In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided

due notice of dishonour has been given to, or received by, such indorser as hereinafter provided,

Every indorser after dishonour is liable as upon an instrument payable on demand

576=A I R 19?5 Mad 444 Th s section does not apply to promissory note

36 Every perior party to a negotiable instrument is liable thereon to a holder in due course until thei nstrument is duly satisfied

Liability of prior parties to holder in due course

Notes—The expression "pr or party means maker or drawer, the acceptor and the other intervening indorsees

37 The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be

Maker drawer and acceptor principals

Notes—The executant of a pronote should be regarded as princ pal debtor 29 Ind Cas 760 A bank which credits the customer with the amount of a cheque as soon as it is paid in to his credit is usually in the position of a holder in due course of the cheque and collects the same not for the customer but for itself 102

is liable thereupon as principal debtor under S 37 and pres ... for acceptance or for payment is unnecessary 15 N L R 128=51 Ind Cas 859 S 37 makes no distinction between an accommodation note or bill and other notes and bills It sweeps away the distinction in English law between accommodation notes and b lls and other notes and bills as also the doctrine of notice prevailing in the Engl sh Courts 38 L W 961=A I R 1934 M 75

38 As between the parties so liable as sureties each prior party is in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party

Prior party a principal in respect of each subsequent party

Illustration

A draws a bill payable to his own order on B who accepts A afterwards indorses the bill to C, C to D, and D to E As between E and B, B is the princ pal debtor, and A C and D are his suret es As between E and A, A is the principal debtor, and C and D are his sureties As between E and C C is the principal debtor, and D is his surety

39 When the holder of an accepted bill of exchange enters into any contract with the acceptor which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged

Suretyship

Notes—This section is an exception to the general law that if a debtor is discharged by the creditor the surety is also discharged

40 Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity

Discharge of indorser's liability

Illustration

A is the holder of a bill of exchange made payable to the order of B which contains the following indorsements in blank —

First indorsement, 'B'
Second indorsement 'Peter Williams'
Third indorsement, 'Wright & Co'
Fourth indorsement, "John Rozario

This bill A puts in suit against John Rozario and strikes out without John Rozario's consent the indorsements by Peter Williams and Wright & Co A is not entitled to recover anything from John Rozario.

41 An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill

Acceptor bound although indorsement forged

Notes—An acceptor who has admitted the authenticity of his sign as true cannot afterwards refuse to honour it on the ground that it is forged *Leach v Buckman* (1802) 4 Esp 226

42 An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer

Acceptance of bill drawn in fictitious name

Notes—Where a promissory note which is not negotiable alleges a deposit of cash as the consideration for the note and that consideration fails the document will create no obligation between the parties even if it were negotiable under this section L B R (1893 1900) 537

43 A negotiable instrument made, drawn, accepted, indorsed or transferred [illegible] sidera[illegible] ayment [illegible] *if any* such party has transferred the [illegible] to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto

Negotiable instrument made, etc., without consideration

Exception I—No party for whose accommodation a negotiable instrument has been made drawn accepted or indorsed can if he have paid the amount thereof, recover, thereon such amount from any person who became a party to such instrument for his accommodation

Exception II—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him, for a consideration which he has failed to pay or perform in full, shall recover thereon, an amount exceeding the value of the consideration (if any) which he has actually paid or performed

Notes—Where a person endorses a cheque in blank at the request of the drawer under the impression that it is only a formality, that he would incur no liability thereby and that otherwise the cheque could not be cashed and such blank endorsement is

[illegible]

for a larger amount than was due was drawn the drawee is entitled only to the actual amount due 80 Ind Cas 572

Partial absence or failure of money consideration

44 When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced

Explanation —The drawer of a bill of exchange stands in immediate relation with the acceptor The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee Other signers may by agreement stand in immediate relation with a holder.

Illustration

A draws a bill on B for Rs 500 payable to the order of A B accepts the bill, but subsequently dishonours it by non payment A sues B on the bill B proves that it was accepted for value as to Rs 400 and as an accommodation to the plaintiff as to the residue A can only recover Rs 400

Notes — A consideration [illegible] accruing to the one party or [illegible] suffered, or undertaken by th[illegible] the consideration for whic[illegible] of money or something the [illegible] it was either originally absent in past or has subsequently failed in part the sum which a holder standing in immediate relation to such party is entitled to receive from him is *pro tanto* reduced *Day v Nix*, 9 Moore 159 *Forman Wright*, 11 C B 481

Partial failure of consideration not consisting of money

45 Where a part of the consideration for which a person signed a promissory note bill of exchange or cheque, though not consisting of money is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced

Notes —This section is based on the English law which is stated by Chalmers in his book on bills of exchange as follows ' Partial failure of consideration is a [illegible]

reduction can be made 4 S L R 147

Holder's right to duplicate of lost bill

45A * Where a bill of exchange has been lost before it is overdue, the [illegible]

indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so

Notes —Where *hundi* payable at sight is lost it cannot be said that it is lost before it is overdue within this section The holder of such a *hundi* is not therefore as of right entitled to demand a duplicate from the drawer under that section The right to obtain a duplicate in case of loss is however a part of the mercantile laws of

* S 45 A has been inserted by Act 2 of 1885, s 3

countries and a duplicate may be demanded on equitable principles where the bill is lost whether before or after maturity Where owing to the refusal of the drawee of a *hundi* to supply a duplicate none is presented to the drawee no presentment for payment is necessary as against the drawee under section 76 (a) of the Negotiable Instruments Act 72 Ind Cas 777

CHAPTER IV

Of Negotiation

46 The making, acceptance or indorsement of a promissory note bill of exchange or cheque is completed by delivery, actual or constructive

Delivery

As between parties standing in immediate relation, delivery to be effectual must be made by the party making accepting or indorsing the instrument, or by a person authorized by him in that behalf

As between such parties and any holder of the instrument other than a holder in due course it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof

Notes—Government promissory note can be transferred by registered deed of gift 16 C W N 666 Sending of cheques by post does not constitute delivery 50 B 118 Under this section it may be shown that the instrument was delivered conditionally or for a special purpose only and not for the purpose of transferring absolutely the property therein 76 Ind Cas 461 Pronote could be shown to be given as security 113 Ind Cas 456 Property in a currency note passes by mere delivery 103 Ind Cas 719 The liability in relation to a negotiable instrument attaches by or from delivery 100 Ind Cas 332 In order to make the property in a bill pass it must be delivered to the indorsee actually or constructively 87 Ind Cas 226

47 Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof

Negotiation by delivery

Exception—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens

Illustrations

(a) A the holder of a negotiable instrument payable [illegible] it to B's [illegible] is in the [illegible] banker to [illegible] The banker does so and accordingly now possesses the instrument as B s agent The instrument has been negotiated and B has become the holder of it

Notes—The method of negotiating bills and notes is (1) where they are payable to bearer simply by delivery, (2) where they are payable to order by endorsement and delivery *Halsbury*, Vol II p 479 Delivery means transfer of possession actual or constructive from one person to another *Ibid* p 463 But part delivery does not complete the contract *Smith* v *Munday* 29 L J B 177

48 Subject to the provisions of section 58 a promissory note bill of exchange or cheque "payable to order"* is negotiable by the holder by indorsement and delivery thereof

Negotiations by indorsement

Notes—See 66 Ind Cas 50, 87 Ind Cas 226, A I R 1932 Nag 23; A I R 1932 Lah 30

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* The words within quotations have been substituted by Act 8 of 1919

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full, and the holder does not thereby incur the responsibility of an indorser.

Conversion of indorsement in blank into indorsement in full

Notes —The conversion of a blank endorsement into a special indorsement is sanctioned by the English Bills of Exchange Act, 1882 (45 & 46 Vict c 61) s 34 (4) [illegible] not the drawee 129 Ind Cas 305

50 The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation, but the indorsement may, by express words, restrict or excludes such right, or may merely constitute the indorsee an agent to indorse the instrument or to receive its contents for the indorser, or for some other specified person

Effect of indorsement

Illustrations

B signs the following indorsements on different negotiable instruments payable to bearer —

(*a*) "Pay the contents to C only"
(*b*) "Pay C for my use"
[illegible] C
(*e*) [illegible]
(*f*) 'Pay C value in account with the Oriental Bank
(*g*) 'Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others"

These indorsements do not exclude the right of further negotiation by C

[illegible] the note as such and cannot [illegible] *This section is not limited* [illegible] L R 34=86 Ind Cas 118 [illegible] in the first instance to order [illegible] payable to bearer can have a [illegible]

51 Every sole maker, drawer, payee or indorsee, or of all several joint makers, drawers, payees or indorsees of a negotiable instrument, may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same

Who may negotiate

Explanation —Nothing in this section enables a maker or drawer to indorse or negatiate an instrument, unless he is in lawful possession or is holder thereof, or enables a payee or indorsee to indorse or negotiate an instrument unless he is holder thereof

Illustration

A bill is drawn payable to A or order A indorses it to B, the indorsement not containing the words "or order' or any equivalent words B may negotiate the instrument

Notes —One of two joint payees, in whose favour the other payee has also endorsed the note, cannot sue as indorsee or as one of two joint payees but as assignee of actionable claim 24 M 654, see also 34 M 657 N This section does not require that the Indorsement should be at one and the same time 1922 M W N 263

52 The indorser ... words in the ... thereon, or ... e indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen

Indorser who excludes own liability or makes it conditional

Where an indorser so excludes his liability, and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him

Illustrations

(*a*) The indorser of a negotiable instrument signs his name, adding the words—"Without recourse"

Upon this indorsement he incurs no liability ... personal ... B, and ... r rights, but has the rights of an indorsee against B and C

... insert an express stipulation negotiating or limiting ... rds himself some or all of the ... may indorse *sans recourse* or ... *Cf Goupu* v *Harden*, (1816) ... C 94

53 A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course

Holder deriving title from holder in due course

Notes – Under section 118 the presumption is in favour of the holder in due course, and under this section any subsequent holder whether for or without consideration ... awer 2 Bom L R 891 ... T 300= 1 Ind Cas 621

54 Subject to the provisions hereinafter contained as to crossed cheques a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order

Instrument indorsed in blank

Notes —It is open to any indorsee as being the payee named in the indorsement just as it was to the original payee to indorse an instrument payable to order in blank and so make it payable to bearer *Halsbury* Vol II, p 480, see also 9 P R 1906=19 P L R 1906 16 B 689, *Peacock* v *Rhodes* (1781) 2 Doug 633 But a promissory note does not fall within this rule 7 L B R 70

55 If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full except by the person to whom it has been indorsed in full, or by one who derives title through such person

Conversion of indorsement in blank into indorsement in full

56 No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument which may then be negotiated for the balance

Indorsement for part of sum due

Notes —This section is no bar to the indorsement or transfer of the whole of the balance due with a promissory note 5 P W R 1918=44 Ind Cas 264

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered

Legal representative cannot by delivery only negotiate instrument indorsed by deceased

Notes—A legatee cannot acquire any interest in a promissory note executed in favour of the executor in the absence of any indorsement by the executor 44 M L J 510=70 Ind Cas 760

Instrument obtained by unlawful means or for unlawful consideration

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to each holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course

Notes—A prom ssory ... by means of an offence or f... endorsement being ante da... holder has to show that he ... and without suspecting def... The section is not exhaustive of the offence 112 Ind Cas 8?4

Instrument acquired after dishonour or when overdue

59 The holder of a negotiable instrument, who has acquired it after dishonour, whether by non acceptance or non payment, with notice thereof, or after maturity has only, as against the other parties, the rights thereon of his transferor

Accommodation note or bill

Provided that any person who in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn, or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party

Illustration

The acceptor of a bill of exchange when he accepted it, deposited with the drawer certain goods as a collateral security for th... drawer to sell the goods and apply the proceed... not paid at maturity The bill not having ... the goods and retained the proceeds but endor... to the same objection as the drawer s title

Notes—Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour *Halsbury* Vol II p 508, *Hornby* v *McLaren*, (1908) 24 T L R 494, *Crossby* v *Ham* (1811) 13 East 498 But where a bill is dishonoured by non acceptance and notice of dishonour is not given the rights of a holder in due course subsequent to the omission are not prejudiced thereby *Halsbury* Vol II p 508, see also (1916) M W N 107=4 L W 35=35 Ind Cas 591 A promissory note given for reducing liability only operates as a conditional discharge for the liability 128 Ind Cas 518 A *bona fide* holder for value of a pronote payable on demand cannot be affected by any previous demand for payment of which he had no notice 113 Ind Cas 456

Instrument negotiable till payment or satisfaction

60 A negotiable instrument may be negotiated (except by the maker, drawee, or acceptor after maturity) until payment or satisfaction thereof by the maker drawee or acceptor at or after maturity, but not after such payment or satisfaction

Notes—Payment by the maker of a promissory note to the payee is no defence against a holder in due course 35 Ind Cas 591

52 The indorser ... may by express words in the ... or ... to ... ne ... nt may never happen

Indorser who excludes own liability or make conditional

Where an indorser so excludes his liability, and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him

Illustrations

(a) The indorser of a negotiable instrument signs his name, adding the words—'Without recourse ...

... nent Excluding personal ... the instrument to B and ... tated in his former rights but has the rights of an indorsee against B and C

... for an express ... ulation negotiating or limiting ... rds himself some or all of the ... may indorse *sans recourse* or ... *Cf Goupu* v *Harden*, (1816) 7 Taunt 159 *Castrique* v *Buttigieg*, (1855) 10 Moo P C 94

53 A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course

Holder deriving title from holder in due course

Notes – Under section 118 the presumption is in favour of the holder in due course, and under this section any subsequent holder whether for or without consideration stands in his shoes and can enforce his rights against the drawer 2 Bom L R 891 A transferee acquires all the rights of the holder 5 M L T 300= 1 Ind Cas 621, see also 10 Bom L R 268=32 B 247

54 ... crossed cheques ... in blank is pay ... n although originally payable to order

Instrume... blank

Notes —It is open to any indorsee as being the payee named in the indorsement just as it was to the original payee to indorse an instrument payable to order in blank and so make it payable to bearer *Halsbury* Vol II, p 480, see also 9 P R 1906=19 P L R 1906 16 B 689, *Peacock* v *Rhodes*, (1781) 2 Doug 633 But a promissory note does not fall within this rule 7 L B R 70

55 If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full except by the person to whom it has been indorsed in full, or by one who derives title through such person

Conversion of indorsement in blank into indorsement in full

56 No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance

Indorsement for part of sum due

Notes —This section is no bar to the indorsement or transfer of the whole of the balance due with a promissory note 5 P W R 1918=44 Ind Cas 264

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

57 The legal representative of a deceased person cannot negotiate by delivery only a promissory note bill of exchange or cheque payable to order and indorsed by the deceased but not delivered

make the indorser of a prom ssory note A I R 1931 Mad 113 Presentment of a pecified place is necessary to render the 758 The acceptor of a hundi remains liable under it inspite of the fact that it was not presented for payment 125 Ind Cas 449 Presentment for payment is necessary to make the indorser of a promissory no e payable on demand liable to the endorsee 1930 M W N 1232

Hours for presentment

65 Presentment for payment must be made during the usual hours of business, and, if at a banker s, within Banking hours

Notes — de English Bills of Exch l is payable at a bank pr v Gordon (1806) 7 East

Presentment for payment of instrument payable after date or sight

66 A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity

Notes —Where a promissory note is not presented for payment at maturity as required by this section, the maker of the note is not thereby relieved from his liability 21 A 450=A W N 1879 157, 122 Ind Cas 406 In case of Indorser presentment for payment is necessary A L R 1932 N 55

Presentment for payment of promissory note payable by instalments

67 A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment, and non payment on such presentment has the same effect as non payment of a note at maturity

Notes —Non presentment of a note when an instalment falls due, discharges the indorsers only as to that instalment *Byles on Bills 7th* Ed p 8

Presentment for payment of instrument payable at specified place and not elsewhere

68 A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place, and not elsewhere, must, in order to charge any party thereto, be presented for payment at that place

Notes —No presentment is valid unless it is made after the bill had matured 23 A L J 349=87 Ind Cas 488 The word 'place includes places 94 Ind Cas 384

Instrument payable at specified place

69 A promissory note or bill of exchange made drawn, or accepted payable at a specified place must in order to charge the maker or drawer thereof be presented for payment at that place

Notes—The word "place includes places 94 Ind Cas 384=A I R 1926 Mad 792=50 M L J 242

Presentment where no exclusive place specified

70 A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any) or at the usual residence of the maker drawee or acceptor thereof as the case may be

Presentment when maker etc has no known place of business or residence

71 If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence and no place is specified in the instrument for presentment for acceptance or payment such presentment may be made to him in person wherever he can be found

Notes —Where no place is specified and no address is given the instrument may be presented at the usual place of business if known and if not then at the

ordinary residence if known, of the person to make payment In any other case, the instrument may be presented to the person to make payment wherever he can be found or at his last known place of business or residence *Halsbury*, Vol II, p 533

72 'Subject to the provisions of section 84'* a cheque must, in order to charge the drawer be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer

Presentment of cheque to charge drawer

Notes —Where for non presentment within a reasonable time the drawer suffers actual damage through the delay, he is discharged to the extent of such damage *Halsbury*, Vol III, p 531

73 A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person

Presentment of cheque to charge any other person

Notes —An indorser is discharged if the presentment is not duly made within reasonable time after endorsement *Vide* s 45 (2) *of the English Act* What is a reasonable time is a question of fact in each case, and is to be determined regard being had to the nature of the instrument, the usage of trade and of bankers and the facts of the particular case *Serley* v *Norton* (1841) 2 Moo & R 401

74 Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder

Presentment of instrument payable *on demand*

Notes —21 C W N 479

75 Presentment for acceptance or payment may be made to the duly authorised agent of the drawee maker or acceptor, as the case may be or where the drawee maker or acceptor has died to his legal representative, or where he has been declared an insolvent to his assignee

Presentment by or to agent, *representative of deceased*, or assignee of insolvent

Notes —*Vide* 21 B 294

75A † Delay in presentment 'for acceptance or payment ‡ is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence When the cause of delay ceases to operate, presentment must be made within a reasonable time

Excuse for delay in presentment for acceptance or payment

Notes —Allowance is made for special circumstances *e g* where the payee is ill *Firth* v *Brooks*, 4 L T 467

76 No presentment for payment is necessary and the instrument is dishonoured at the due date for presentment, in any of the following cases —

When presentment unnecessary

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours or,

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

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* The words quoted have been added by the Negotiable Instruments Act (Amendment) Act (VI of 1897) s 2

† Section 75A has been added by Act 25 of 1920

‡ The words within quotations were substituted by Act 12 of 1921

if the instrument not being payable at any specified place, he cannot after due search, be found ,

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non presentment •

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,
or promises to pay the amount due thereon in whole or in part
or otherwise waives his right to take advantage of any default in presentment for payment,

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment

Notes —Presentment for payment is dispensed with under this section as against the drawer if the drawer could not suffer damage from want of presentment 15 A L J 267=39 A 364

Under clause (*b*) the engagement to pay must have been entered into prior to maturity 57 Ind Cas 604 Mere demand of money is not presentment 55 Ind Cas. 610, see also 87 Ind Cas 488

Clause(*d*)—*Vide* 86 Ind Cas 357, A I R 1925 Sind 241, 92 Ind Cas 1015; 99 Ind Cas 875, 8 Lah L J 604

Liability of banker for negligently dealing with bill presented for payment

77. When a bill of exchange accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss

Notes —The effect of the section is to constitute the banker to whom presentment is made a bailee for the holder *Vide Chalmer's Negotiable Instruments Act*, p 116

CHAPTER VI.

Of Payment and Interest

To whom payment should be made

78 Subject to the provisions of section 82 clause (*c*) payment of the amount due on a promissory note, bill of exchange or cheque must in order to discharge the maker or acceptor, be made to the holder of the instrument

Notes —A person who holds an instrument in his own name is entitled to maintain a suit upon it whether the instrument be negotiable or not 13 A L J 695=29 Ind Cas 988 The payment must be made to the holder 30 M 88 (F B), 28 M 88, 18 M L J 186, 49A 457=100 I C 703—25 A L J 402 Where a promissory note

A person not indorsee, claiming under a pronote has no right to claim payment 1928 Nag 54 Where holder and owner are different persons the owner is not

see also A I R 1930 P 313

Interest when rate specified

79 When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs

Notes Court has no option to disallow interest 11 Ind Cas 891, see also U B R (1892 96) 591, see also 4 C 137, 55 P W R 1907, 11 Ind Cas 891 The Negotiable Instruments Act must be read with other enactments passed subsequent thereto If under the Usurious Loans Act which was passed after the Negotiable Instruments Act but before the suit a promissory note was executed the Court has a discretion to reduce interest in a proper case There is nothing in s 79 of the [illegible] —A [illegible] urt [illegible] to [illegible] 934 Lah 44=A I R 1934 Lah 32

Interest when no rate specified

80 When no rate of "interest is specified in the instrument, interest on the amount due thereon shall "notwithstanding any agreement relating to interest between any parties to the instrument,"* be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs

Explanation —When the party charged is the indorser of an instrument dishonoured by non payment, he is liable to pay interest only from the time [illegible]

[illegible] 165 P L R 1911, 6 P L R 1905, [illegible] 296 But this section does not affect [illegible] L T 309, see also 11 C W N 105 [illegible] 9=1 M L T 427=9 Bom L R 1=5 [illegible] ut see 6 A L J 233=2 Ind Cas 199 This section does not purport to deprive those dealing with such instruments of the freedom of contract possessed by other contracting parties It purports to confer a right to interest not to take away those rights *Rangappa* v *Bissmilla* 12 N L R 9=32 Ind Cas 238, see also 51 Ind Cas 106 Where promissory note does not [illegible] cent [illegible] 69 [illegible] 50 [illegible] is that when the rate of interest is not specified in the negotiable instrument interest can not be allowed at more than 6 per cent per annum 134 Ind Cas 121 Where no rate of interest is mentioned in the *pronote* the Court's award at 1 p c per mensem is illegal A I R 1930 Lah 30

Delivery of instrument on payment or indemnity in case of loss

81 Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up to him, or, if the instrument is lost or can not be produced to be indemnified against any further claim thereon against him

Notes [illegible] when he presents an instrument for payment [illegible] hom payment is demanded and on receiving [illegible] paying it English Bills of Exchange Act [illegible], *Pamur* v *Crowe* (1847) 1 Exch 167 see [illegible] iff is entitled to sue upon a lost negotiable instrument on proof of loss and giving indemnity *Vide* Civil Procedure Code Order VIII, r 16, see also 2 A 754

* Substituted by Act 30 of 1926

CHAPTER VII

OF DISCHARGES FROM LIABILITY ON NOTES, BILLS AND CHEQUES

Discharge from liability—

82 The maker, accepter, or indorser respectively of a negotiable instrument is discharged from liability thereon—

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder,

by cancellation;

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge,

by release,

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser, makes payment in due course of the amount due thereon

by payment

Notes—A bill of exchange is not cancelled merely because the time of payment was extended by consent of parties because extension of time is not defined in this section as one of the modes of discharging the liability of the acceptor 28 Bom L R 1264 Extension of time by consent of parties—bills whether discharged 99 Ind Cas 480=A I R 1927 Bom ...

... 189 Ind Cas 259 S 82 deals generally with discharge of parties 64 M L J 241= A I R 1933 Mad 300

Discharge ... ee more than forty eight hours to accept

83 I... rawee more than "forty ... of public holidays to ... accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder

... s 83 should be construed ... lls of exchange in which ... to *hundis* of the usual ... This section does not ... ented not for acceptance ... on 53 of the Act does not ... acceptance but for the purpose of payment 48 Ind Cas 423

When cheque not duly presented and drawer damaged thereby

84† (1) Where a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker to have the cheque paid and suffers actual damage through the delay he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument the usage of trade and of bankers and the facts of the particular case

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* The words within quotations have been substituted by Act 12 of 1921

† Section 84 has been substituted for the original section by Act VI of 1897 s 3

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him

Illustrations

(a) A draws a cheque for Rs 1,000, and, when the cheque ought to be presented, has funds at the Bank to meet it The Bank fails before the cheque is presented The drawer is discharged but the holder can prove against the bank for the amount of the cheque

(b) A draws a cheque at Umballa on a bank in Calcutta The bank fails before the cheque could be presented in ordinary course A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque

... section 74 of the English Bills of Exchange Act ... reasonable time is a question of fact in each case ... Moo & R 401, For cases *vide Alexander* v ... , *Hare* v *Henty*, (1861) 30 L J C P 302, *Pri*... 455

85 (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course

Cheque payable to order

*(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof notwithstanding any endorsment whether *in full or in blank appearing thereon, and notwithstanding that* any such endorsment purports to restrict or exclude further negotiation *

Notes —No person can claim title to any negotiable instrument through a forged endorsement except in cases mentioned in this section 1923 Sind 54

"85A † Where any draft that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course"

Drafts drawn by one branch of a bank on another payable to order

86 If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners is not signed by all the drawees, all ... ined to such acceptance are discharged ... under him unless on notice given by

Parties not consenting discharged by qualified or limited acceptance

Explanation —An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(b) where it undertakes the payment of part only of the sum ordered to be paid,

(c) where no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere, or where a place of payment being specified in the order, it undertakes the payment at some other place, and not otherwise or elsewhere;

(d) Where it undertakes the payment at a time other than that at which, under the order it would be legally due

Notes —An acceptance may be qualified in a variety of ways; (1) it may be conditional, *i e*, it may make payment of the bill by the acceptor dependent on the fulfilment of a condition stated by him in his acceptance, or (2) it may be partial *i e*,

* Added by Act 17 of 1934

† Added by Act XXV of 1930

an acceptance to pay part only of the amount for which the bill is drawn , or (3) it may be local , or (4) it may be qualified as to term , or finally (5) it may be qualified by being accepted by one or more of the drawees but not by all *Halsbury's Laws of England*, Vol II, p 488

Effect of material alteration

87 Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ,

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections, 20, 49, 86, and 125

Notes—Oral evidence of mistake can be given 10 M L T 522 , 2 M W N 556 Addition of names as promisor is material alteration U B R (1892 96) 503 The signing of a pronote at different times is void L B R (1893 1900) 627 Additional signature of a maker is not a material alteration L B R (1900 1902) Vol I, 255 An alteration in *hundi* reducing the period of payment is a material alteration 55 Ind Cas 610 ; see also 12 M L T 333 Alteration of date or name of payee is a material alteration 20 A L J 987 Where in a pronote the words at 5 p c per mensem were written at the time of its execution but the words "with interest" were inserted subsequently *Held*, that there was no material alteration 23 A L J 109=86 Ind Cas 552 Under this section a negotiable instrument is void if there is any material alteration without the consent of the party against whom it is sought to be enforced unless the alteration is made to carry out the common intention of the original parties 21 L W 532=87 Ind Cas 482 Where the pronote is void under this section the executant is bound to pay the loan

alte

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date

not

Acceptor or indorser bound notwithstanding previous alteration

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement, notwithstanding any previous alteration of the instrument

Notes—The bill is avoided as regards all parties except any one who has himself made, authorised or assented to the alteration and those who have become parties to the instrument subsequent to the material alteration *Halsbury* Vol II, p 555 citing *Master* v *Miller*, 2 Hy Bl 140 , *Humelin* v *Bruck*, (1846) 9 Q B 306

Payment of instrument on which alteration is not apparent,

89 Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not, at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon , and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed

Notes—This section is much wider than section 79 of the English Bills of Exchange Act, 1882 s 79 If interest is not mentioned at all in the instrument then "no rate of interest is specified therein and consequently the section applies 130 Ind Cas 134

90 If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished

Extinguishment of rights of action on bill in acceptor's hands

Notes —This section corresponds to section 61 of the English Bills of Exchange Act 1882, see also *Hurmer* v *Stule* (1849) 4 Exch 1 In *Nash* v *De Freville* (1900) 2 Q B 72 *Collins L J* said "In his own right must mean something [illegible] It could not [illegible] his own right must mean having a right not subject to that of a [illegible] own good against all the world

CHAPTER VIII

Of Notice of Dishonour

91 A bill of exchange is said to be dishonoured by non acceptance when the drawee, or one of several drawees not being partners makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted

Dishonour by non acceptance

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured

Notes —Dishonour gives cause of action to a suit. 20 B 133 Where there is no allegation that the presentment was excused the plaintiff must prove that the drawee was required to accept the bill and that he dishonoured it by non acceptance 86 Ind Cas 576, A I R 1925 Mad 444

92 A promissory note, bill of exchange or cheque is said to be dishonoured by non payment, when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same

Dishonour by non payment

Notes —The provisions of this section dealing with dishonour by non payment of a bill payable on demand though presented for acceptance is not required by law in such a case 52 Ind Cas 370 see also 40 L W 666

93 When a promissory note bill of exchange or cheque is dishonoured by non acceptance or non payment, the holder thereof or some party thereto who remains liable thereon must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon and to some one of several parties whom he seeks to make jointly liable thereon

By and to whom notice should be given

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque

Notes —Notice of dishonour must be given within a reasonable time 140 P W R 1914 = 243 P L R 1914, see also 13 Ind Cas 215 = 5 S L R 168 In the case of *hundis* such notice is required 6A 78 = A W N 1883 216 The *onus* is on the plaintiff to show that such notice is given *Dawson* v *Sherwood* (1816) 1 Stark 314 Notice of dishonour should be given to the indorser of a promissory note payable on demand in order to make him liable on the instrument. 130 Ind Cas 477 = A I R 1931 Mad 113

94 Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee may be oral or written, may, if written, be sent by post, and may be in any form, but it must inform the party to whom it is given, either in

Mode in which notice may be given

express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon, and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Notes —Notice may be given in writing or by personal communication *Metcalfe* v, *Richardson*, (1852) 11 C B 1011, *Prideaux* v *Criddle*, (1869) L R 4 Q B 455 It may be sent by post *Dobree* v *Eastwood* (1827) 3 C. & P. 250, see also *Berridge* v *Fitzgerald*, (1869) L R 4 Q B 639 It may be sent by special messenger *Pearson* v *Barron*, 2 Smith K B 404

Party receiving must transmit notice of dishonour

95 Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, *unless such party otherwise receives due notice* as provided by section 93

Agent for presentment

96 When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour

Notes —*Vide Clode* v *Bayley*, (1843) 12 M & W 51, *Lysaght* v *Bryant*, (1850) 19 L J, C P 160

When party to whom notice given is dead

97 When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient

Notes —If he is not ignorant of his death notice should be given to his legal representatives *Vide*, *Halsbury*, Vol II, p 545

When notice of dishonour is unnecessary

98 No notice of dishonour is necessary

(*a*) when it is dispensed with by the party entitled thereto

(*b*) in order to charge the drawer when he has countermanded payment

(*c*) when the party charged could not suffer damage for want of notice,

(*d*) *when the party entitled to notice cannot after due search be found* or the party bound to give notice is, for any other reason, unable without any fault of his own to give it,

(*e*) to charge the drawers when the acceptor is also a drawer,

(*f*) in the case of a promissory note which is not negotiable,

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument

Notes —Neither presentment nor notice of dishonour is necessary if it is shown that at the time when the *hundi* was drawn there were no funds belonging to the drawer in the hands of the drawee 2 Bom L R 891 In case of dishonoured bill of exchange notice of dishonour is absolutely necessary 14 Ind Cas 51 Where [illegible] on the plaintiff [illegible] notice 7 A [illegible] I R 1932 Nag [illegible] notice of dishonour and it is for the person relying upon any such exception to establish all the requirements thereof 55 Ind Cas 610

CHAPTER IX.

OF NOTING AND PROTEST.

99 When a promissory note or bill of exchange has been dishonoured by non acceptance or non payment, the holder may cause such dishonour to be noted by a notary public upon the instrument or upon a paper attached thereto, or partly upon each

Noting

Such notice must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, (if any) assigned for such dishonour or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary s charges

Notes—There are certain advantages in causing even an inland instrument to be noted ' Not only is the notary a person whose business is to know and to adopt the proper measures when an instrument is dishonoured and therefore both the best agent for the carrying out of such measures and the best witness at a trial of their having been carried out but his minute on the instrument itself is the most satis factory record of the non payment of the instrument for the information of the part es who may thereafter be called upon to pay *Halsbury*, Vol II p 537

100 When a promissory note or bill of exchange has been dishonoured by non acceptance or non payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public Such certificate is called a protest

Protest

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill the holder may within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may within a reasonable time, cause such facts to be noted and certified as aforesaid Such certificate is called a protest for better security

Protest for better security

Notes—The expenses of noting, or when protest is necessary and the protest has been extended the expenses of protest are part of the liquidated damages re coverable on dishonour But protest for better security is not necessary and the expenses therefore cannot be recovered *Re English Bank* (1893) 2 Ch 438

Contents of protest

101 A protest under section 100 must contain—

(*a*) either the instrument itself or a literal transcript of the instrument and of everything written or printed thereupon ,

(*b*) the name of the person for whom and against whom the instrument has been protested ,

(*c*) a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public , the terms of his answer (if any) or a statement that he gave no answer or that he could not be found ,

(*d*) when the note or bill has been dishonoured the place and the time of dishonour, and when better security has been refused the place and time of refusal,

(*e*) the subscription of the notary public making the protest ,

(*f*) in the event of an acceptance for honour or of a payment for honour the name of the person by whom of the person for whom, and the manner in which, such acceptance or payment was offered and effected

A notary public may make the demand mentioned in clause (*c*) of this section either in person or by his clerk or, where authorized by agreement or usage by registered letter *

Notes—A protest may be made out in duplicate and the second copy is a much primary ev dence as the copy first drawn out *Geralo pulo* v *Wieler* 20 L J C P 105

* This para has been added by Act 2 of 1885, s 5

102 When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions, but the notice may be given by the notary public who makes the protest

Notice of protest

Notes—In *Exparte Louenthal,* (1874) 9 Ch App 591 at p 593 *James L. J* [illegible]

103 All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non payment in the place specified for payment, unless paid before or at maturity

Protest for non payment after dishonour by non acceptance

Notes—This section corresponds to section 51 (6) of the English Bills of Exchange Act, 1882

104 Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn

Protest of foreign bills

Notes—According to English law protest is only necessary in the case of a foreign bill appearing on its face to be such A protest is not necessary in the case of a foreign promissory note—*Vide* s 51 (2) of the English Bills of Exchange Act, 1882 A bill of exchange drawn upon a resident in British India still remains an inland bill whereever it may have been drawn, and no protest is necessary 129 Ind Cas 190

104A For the purposes of this Act where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended at any time thereafter as of the date of the noting *

When noting equivalent to protest

CHAPTER X

Of Reasonable Time.

105 In determining what is a reasonable time for presentment for acceptance or payment for giving notice of dishonour and for noting regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments and, in calculating such time, public holidays shall be excluded

Reasonable time

N[illegible]
158 [illegible]
fact [illegible]
The [illegible]

106 If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour

Reasonable time of giving notice of dishonour

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* S 104A has been inserted by Act 2 of 1885, s 6

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour

Notes—Time is an element of the utmost importance in regard to the due sending of notice of dishonour Notice must be given within a reasonable time after dishonour *Herschfield* v *Smith* (1865) L R 1 C P 340 It may be given as soon as it is dishonoured If it i
until the follow ng day
course of post, the notice
Hilton v *Fair Clough*, (1811) 2 Camp 633 As to when it is not given on reasonable time, *Vide Smith* v *Mullett*, (1809) 2 Camp 208

107 A party receiving notice of dishonour, who seeks to enforce his right against a prior party transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder

Reasonable time for transmitting such notice

Notes—The provisions of ss 93 94 105 106 and 107 show that the holder of a bill of exchange or *hundi* is bound to give notice of its dishonour at the earliest opportunity to all the parties whom he desires to make liable thereon 104 P W R 1914=243 P L R 1914

CHAPTER XI

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED

108 When a bill of exchange has been noted or protested for non acceptance or for better security, any person, not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto *

Acceptance for honour

Notes—This section corresponds to section 65(1) of the English Bills of Exchange Act, 1882

109 A person desiring to accept for honour must by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour †

How acceptance for honour must be made

Notes—This sect on corresponds to s 65 (3) of the English Bills of Exchange Act, 1882

110 Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer

Acceptance not specifying for whose honour it is made

Notes—This section corresponds to section 65 (4) of the Engl sh Bills of Exchange Act 1882

111 An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not · ·and such party and all prior parties are liab e in
[illegible] onour for all loss or
[illegible]
the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity

Liability of acceptor for honour

* The second sentence of this section has been repealed by Act 2 of 1885, s 7 and has therefore been omitted

† Certain words are repealed hereby Act 2 of 1885, s 8

Notes
Exchang
honour h
Bills 17

112 An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him and *noted or protested for such dishonour*

When acceptor for honour may be charged

113 When a bill of exchange has been noted or protested for non payment any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying 'or his agent in that behalf* has previously declared before a notary public the party for whose honour he pays and that such declaration has been recorded by such notary public

Payment for honour

114 Any person so paying is entitled to all the rights in respect of the bill, of the holder at the time of such payment, *and may recover, from the party for whose honour* he pays all sums so paid with interest thereon and with all expenses properly incurred in making such payment

Right of payer for honour

Notes —This section corresponds to section 68 (5) of the English Bills of Exchange Act, 1882

115 Where a drawee in case of need is named in a bill of exchange or in any indorsement thereon the bill is not dishonoured until it has been dishonoured by such drawee

Drawee in case of need

Notes —Non presentment *to drawee in case of need absolves drawer from* liability 116 Ind Cas 887

Acceptance and payment without protest

116 A drawee in case of need may accept and pay the bill of exchange without previous protest

CHAPTER XII

OF COMPENSATION

117 The compensation payable in case of dishonour of a promissory note bill of exchange or cheque by any party liable to the holder or any indorsee shall† be determined by the following rules —

Rules as to compensation

(*a*) the holder is entitled to the amount due upon the instrument together *with the expenses pro*

(*b*) when the pe
the instrument was
current rate of exchange between the two places

(*c*) an indorser who being liable has paid the amount due on the same *is entitled to the amount so paid with interest at six per cent per annum* from the date of payment until tender or realization thereof together with all expenses caused by the dishonour and payment,

(*d*) when the person charged and such indorser reside at different places the indorser is entitled to receive such sum at the current rate of exchange *between the two places*

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him payable at sight or on demand for the amount due to

* The words quoted have been inserted by Act 2 of 1885 s 9
Certain words after this repealed by Act 30 of 1926 have been omitted

him, together with all expenses properly incurred by him Such bill must be ... and the protest thereof (if any) If ... to make bill

Notes —This section corresponds to sectior ... Act, 1882 The expression ' amount due upon ... terest calculated according to ss 79 and 80 *Hal* ... v *The Royal Bank of Liverpool*, L R 5 Ex ... Cas 67, *Re English Bank*, (1893) 2 Ch 438

CHAPTER XIII

Special Rules of Evidence

Presumptions as to negotiable instruments—

118 Until the contrary is proved, the following presumptions shall be made —

of consideration,

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been been accepted indorsed negotiated or transferred, was accepted indorsed, negotiated or transferred for consideration,

as to date,

(*b*) that every negotiable instrument bearing a date was made or drawn on such date,

as to time of acceptance,

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity,

as to time of transfer,

(*d*) that every transfer of a negotiable instrument was made before its maturity,

as to order of indorsements,

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon,

as to stamp,

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped,

that holder is a holder in due course

(*g*) that the holder of a negotiable instrument is a holder in due course Provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration the burden of proving that the holder is a holder in due course lies upon him

Notes —A promise to pay made in consideration of past co habitation is valid and enforceable 13 M L J 7 *Where undue influence is established* this presumption is shifted 2 P R 190? Under this section the presumption is that the note was for consideration and the burden of proof lay in the defendant to prove that there was none 5 L B R 46=2 Ind Cas 539, see also 2 A W N 253, 28 Ind Cas 402, 31 Ind Cas 739, 80 Ind Cas 741, 58 Ind Cas 982, 3 Lah L J ...

... Ind Cas 266=6 Lah L J 542 *In the case of a promissory note the presumption* arises 102 Ind Cas 42 Burden of proving want of consideration is on the promisor and is not shifted simply because part of the consideration was not paid in cash 122 Ind Cas 383

Clause (b)—34 Ind Cas 617

lirect evidence that the endorsements on a particular ord*r the statutory presumption made in the order in which they appear in the 186

Clause (f)—126 Ind Cas 741=A I R 1930 Sind 4

Clause (g)—*Vide* 80 Ind Cas 572, 101 Ind Cas 325=28 Punj L R 68, 13 Ind Cas 456; 1933 A L J 1241

Criminal trial This presumption does not apply to a criminal trial 18 A L J 1151

Presumption on proof of protest

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved

the notary s name in full Court is entitled to presume

Estoppel against denying original validity of instrument

120 No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn

application of this section is that there before the Court at which the Court is 1926 All 359 A promissory note by a minor is void and the minor is not precluded from denying the validity of the note on being subject to ntage of s 120 A L J 121 L R 470

Estoppel against denying capacity of payee to indorse

121 No maker of a promissory note and no acceptor of a bill of exchange "payable to order"* shall in a suit thereon by a holder in due course, be permitted to deny the payee s capacity at the date of the note or bill, to indorse the same

Notes —*Vide* section 117 of the Indian Evidence Act

Estoppel against denying signature or capacity of prior party

122 No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument

Notes —The to whom after it had he payees, who at the payees on the *hundi* to payee were estopped 30* But endorser is not estopped as against the endorsee from setting up the invalidity of the instrument 44 M 187=39 M L J 573=60 Ind Cas 180 The rule of English law is applicable under the section as regards validity of the instrument (1919) M W N 188

CHAPTER XIV

OF CROSSED CHEQUES

Cheque crossed generally

123 Where a cheque be the words 'and thereof, between of two parallel

* Substituted by Act VIII of 1919

transverse lines simply, either with or without the words "not negotiable" that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally

Notes—The cheques payable to bearer may also be crossed *Byles on Bills*, 17th Ed, p 86

124 Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially and to be crossed to that banker

Cheque crossed specially

Notes—This section corresponds to section 76 (2) of the English Bills of Exchange Act, 1882

Crossing after issue

125 Where a cheque is uncrossed, the holder may cross it generally or specially

Where a cheque is crossed generally, the holder may cross it specially

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable

Where a cheque is crossed specially the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection

Notes—The holder includes payee *Lloyd's Bank* v *Cooke*, (1907) 1 K B 794

Payment of cheque crossed generally

126 Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker

Payment of cheque crossed specially

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection

127 Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof

Payment of cheque crossed specially more than once

Notes—This section corresponds to section 79 (1) of the English Bills of Exchange Act, 1882

128 Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof

Payment in due course of crossed cheque

Notes—This section corresponds to section 80 of the English Bills of Exchange Act, 1882

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid

Payment of crossed cheque out of due course

130 A person taking a cheque crossed generally or specially bearing, in either case, the words "not negotiable' shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had

Cheque bearing 'not negotiable"

Notes—This section corresponds to section 81 of the English Bills of Exchange Act, 1882 *In Great Western Railway Co v. London and County Bank (1881)* A C 414 *Lord Brampton* observed The object of section 81 is obvious It is to afford

to the drawer or holder of a cheque who is desirous of transmitting it to another person as m ch pro ect on as can to con bl be afforded to it against dishonesty or will only take the precaution to

∠ C said
who take a che
security must
for whom they
tional
tiable'
suppos-

holding that a fraudulent holder
e or to the money ' See also

131 A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not in *case the title to the cheque proves defective,* incur any liability to the true owner of the cheque by reason only of having received such payment

Non liability of banker receiv ing payment of cheque

* *Explanation* —A banker receives payment of a crossed cheque for a cus tomer within the meaning of this section notwithstanding that he credits his cus tomer s account with the amount of the cheque before receiving payment thereof

Notes —Fc
it is sent to
(1903) A C 24
of negligence
of fact A I R 1932 Rang 6

CHAPTER XV

Of Bills in Sets

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue *payable only so long as the others remain unpaid* All the parts together make a set , but the whole set constitutes only one bill, and is extinguished when one of the parts if a separate bill, would be extinguished

Set of bills

Exception —When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill

133 As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money re presented by the bill

Holder of first acquired part ent tled to all

Notes —This section corresponds to section 71(3) of the English Bills of Ex change Act, *1882*

CHAPTER XVI

Of International Law

134

Law gov
maker, acc
foreign inst

the instrument, and the respective liabilities of

* Explanation to section 131 has been added by Act 18 of 192

the acceptor and indorser by the law of the place where the instrument is made payable

Illustration

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent and accepted by B payable in Washington, where the rate of interest is 6 per cent The bill is indorsed in British India and is dishonoured An action on the bill is brought against B in British India He is liable to pay interest at the rate of 6 per cent only, but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent

Notes —This section corresponds to section 71 (2) of the English Bills of Exchange Act 1882

135 Where a promissory note bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient

Law of place of payment governs dishonour

Illustration

[illegible] sh India, but accepted payable in [illegible] be protested for such dishonour [illegible] of France though not in accor[illegible] bills which are not foreign The

Notes —*Vide* 46 C 584 58 Ind Cas 641, 25 Bom L R 177

136 If a negotiable instrument is made drawn accepted or indorsed out of British India but in accordance with the law of British India the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India

Instrument made &c out of British India but in accordance with its law

Notes —*Vide* 36 M L J 188, 20 Bom L R 464

137 The law of any foreign country regarding promissory notes bills of exchange and cheques shall be presumed to be the same as that of British India unless and until the contrary is proved

Presumption as to foreign law

Notes —*Vide Brown* v *Gracy* (1881) D and R N C P 41 N, *Lloyd Guibert* (1865) L R 1 Q B at p 129

CHAPTER XVII *

NOTARIES PUBLIC

138 The 'Local Government' † may, from time to time by notification in the official Gazette, appoint any person, by name or by virtue of this office to be a notary public under this Act and to exercise his functions as such within any local area and may by like notification remove from office any notary public appointed under this Act

Power to appoint notaries public

139 The Local Government † may, from time to time by notification in the official Gazette make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters) fix the fees payable to such notaries

Power to make rules for notaries public

SCHEDULE

[*Repealed by Act XII of 1891, 1*]

* Ch XVII has been inserted by Act II of 1885 s 10
† The words within quotations have been substituted by Act 4 of 1914

THE INDIAN OATHS ACT, 1873

ACT NO X OF 1873 *

RECEIVED THE G G 'S ASSENT ON THE 8TH APRIL, 1873

An Act to consolidate the Law relating to Judicial Oaths, and for other purposes

Preamble

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations and to repeal the law relating to official oaths, affirmations and declarations, It is hereby enacted as follows —

I—Preliminary

Short title

1 This Act may be called The Indian Oaths Act, *1873*,

Local extent

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native princes and States in alliance with Her Majesty

Notes— ... ceeding other than that in which it is ... oath was adminis tered the pr ... 35 A 575 Where a statement is ... a special oath will not make it admissible 90 Ind Cas 378 A party may have a perfectly true case and yet for peculiar reasons be unwilling to bind his conscience by a particular form of oath The refusal to take the oath in such cases can be considered merely as a piece of evidence and as not proving the facility of that party's claim 32 P L R 716, 22 B 680

2 [*Repeal of enactments*] *Repealed by Act XII of 1873*

Saving of certain oaths and affirmations

3 Nothing herein contained applies to proceedings before Courts Martial, or to oaths affirmations or declarations pres cribed ' by or under any Instructions under the Royal Sign Manual of His Majesty or' † by any law which, under the provisions of the Indian Councils Act, 1861, the Governor General in Council has not power to repeal

II—Authority to administer Oaths and Affirmations

Authority to administer oaths and affirmations

4 The following Courts a ...

conferred upon them respectively by law —

(*a*) All Courts and persons having by law or consent of parties authority to receive evidence,

(*b*) The Commanding Officer of any military "naval"‡ ' or air force' § station 'or ship ‡ occupied by troops in the service of Her Majesty

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* Declared in force—

in the Sonthal Parganas Reg 3 of 1872, s 3 as amended by Reg 3 of 1899 s 3,
in the Angul District, Reg 3 of 1913 s 3, in the Arakan Hill District, Reg 1 of 1916 s 2,
in Upper Burma (except the Shan States) Act 13 of 1898 s 4,
in British Baluchistan Reg 2 of 1913 s 3,
In the Pargana of Manpur, Reg 2 of 1926 s 2

‡ by Act VI of 1919

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India

Notes—Oath can be administered in a proceeding under s 164 of the Criminal Procedure Code 16 M 421, 29 M 89, 8 Bom L R 589, 10 C P L R Cr 16 (but see 2 P R 1893 Cr) So also in an inquiry under s 122 of the Criminal Procedure Code 20 A 371, A W N (1903) 36, An oath can be administered in a proceeding under s 100 of Cr P Code 36 Ind Cas 171 But oath cannot be administered in a non judicial enquiry 35 Ind Cas 672=11 B H C R 11

III—Persons by whom Oaths or Affirmations must be made

Oaths or affirmations to be made by—

5 Oaths or affirmations shall be made by the following persons :—

Witnesses,

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence,

interpreters,

(*b*) interpreters of questions put to, and evidence given by, witnesses, and

jurors

(*c*) jurors

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties

Child—Oath should be administered even to a child but where *no oath* has been administered the evidence is not inadmissible 31 P R 1889 Cr S C 242 Oudh, *11 C P L R Cr 16, 16 M* 105 (*Per Parker J*), 22 Ind Cas 737 In every case where a witness is a competent witness under s 118 of the Evidence Act, oath should be administered 61 Ind Cas 705, 41 C 405, *120* Ind Cas 514

Interpreters—The only effect of the omission of the *interpreter* to take the oath was to render it necessary for the prosecution to prove that the interpretation was correctly made 13 C W N 91=9 C L J 690

Accused—An accused is not a competent witness against his co accused 22 C W N 405=45 C 720 This section applies to an accused person while he is under trial 101 Cas 657

Affirmation by Natives or by persons objecting to oaths

6 Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall instead of making an oath, make an affirmation

In every other case the witness, interpreter or juror shall make an oath

Notes—W[illegible] ...adans are [illegible] ...rative that [illegible] ...is neither [illegible] 19 C 355

IV.—Forms of Oaths and Affirmations

Forms of oaths and affirmations

7 All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe

And until any such *forms* are *prescribed by the High Court*, *such oaths* and affirmations shall be administered according to the forms now in use *

Powers of Court to tender certain oaths

8 If any party to, or witness in any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuation to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him

Scope—Ss 8 to 11 do not apply to Criminal Proceedings 13 B 389, 13 Ind Cas 215, 22 Bom L ... ll proceedings ... Weir 822 Under this ... of oath should be specified 23 P R 1887 ... attention of God to the witness but the ... necessary to an oath is an appeal to the ... order of truth and the avenger of falsehood ... o what oaths are

Court—A Local Commissioner is not a Court 3 Ind Cas 621, 89 P R 1909 Arbitrators are also not Courts 4 A 283

... third person ... 1903, 85 P R ... himself by the

Withdrawal.—is not ordinarily allowed 29 A 49, 22 B 281, 16 Ind Cas 733, 18 A 46, 22 M 234 An agreement that failure to take oath will decide the suit is not valid 31 M 1 In a case when party agrees to abide by oath of a particular person but consent was subsequently withdrawn the Court should either proceed to administer the oath and decide the case or draw the necessary inference from the partys refusal and proceed with the trial according to law 99 Ind Cas 288

Court may ask party or witness whether he will make oath proposed by opposite party

9 If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8 if such oath or affirmation is made by the other party to or by any witness in such proceeeding the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question

Party—The word "party includes duly authorized agent A I R 1931 Oudh 350=8 O W N 880 114 Ind Cas 759 A duly authorized agent holding a special power of attorney from a party to a suit enabling him to conduct a suit in a manner he may deem fit can make an offer under this section 38 A 131 A I R 1931 Oudh 350=8 O W N 880, 129 Ind Cas 408, 79 Ind Cas 246 So also a pleader specially authorized can make an offer 14 B 455, P R 72 of 1874, P J (1890) 331, 1923 All 65 ... such offer cannot be made ... 75 P R 1900 ... P R 1903 The statement made by one o... agreement made under the Act is binding ... red to be so bound where however the rights and liabilities of the ... particular case are inseparable

* The explanation to s 7 being repealed by the Lower Burma Courts Act (... 1900) Sch II is here omitted

a decree can be passed even against the defendant who was not a party to the agreement 8 O W. N 880=A I R 1931 Oudh 350, see also 118 Ind Cas 188

Minor—The next friend of a minor plaintiff can make such an offer P R. 18 of 1891 (F B) So also the guardian of a minor defendant can 12 M 483, 12 M 503; 27 C 229, 21 A 25, 19 A L J 911, 102 Ind Cas 38

Estoppel—A refusal to take an oath does not make an estoppel P J 1897 p 72 But the Court can draw its own inference 31 M 1 But where both parties refuse no inference should be drawn 7 N L R 50

Retraction—Before taking the oath is not allowed 1896 P J 347 This section does not allow a party to retract after the opponent has accepted the proposal 49 A 388=1927 All 595, 84 Ind Cas 729 If the party who agrees to be bound prevents [illegible] e it decreed in his favour [illegible] can proceed on evidence [illegible] nder s 144 Cr Pro Code [illegible] so 5 M 259, 13 M L T [illegible] t is accepted is applicable to an offer made under the Oaths Act 35 C W N 130=A I R 1931 Cal 549 The Court has discretion to allow retraction if good grounds are shown therefor 92 Ind Cas 813

Swearing with Ganges water in hand is sufficient compliance where the other party demands that 6 A L J 244, see also L R 5 A 147 (Rev), 1924 A 126

Oaths taken in form other than proposed are not conclusive A W N 1885, 188

When one party resiles from agreement to be bound by oath the Court has no power to dismiss the plaintiff's suit 99 Ind Cas 288=A I R 1927 Lah 71

A referee by whose statements the parties have agreed to abide can be re examined if all the points necessary to be established are not put to him 192 Ind Cas 510

Administration of oath if accepted

10 If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court

Scope—Agreement must specify the form of oath and the place where it should be taken 21 M L J 618 The procedure must be strictly followed 6 Ind Cas 604 Where the Court does not administer it personally he should issue a commission 7 C P L R 122, see also 18 Ind Cas 930

Evidence conclusive as against person offering to be bound

11 The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated

Scope—The evidence so given is conclusive against the party who offered to be bound by the oath 7 C P L R 122, 49 Ind Cas 1005, 45 Ind Cas 230 But it does not in any way compel the Court trying the case to accept that evidence as conclusive 14 A 141 26 Bom L R 713=82 Ind Cas 359, 92 Ind Cas 813 The expression 'conclusive proof' is to be interpreted in the sense in which it is used in the Indian Evidence Act 8 Bom L R, 19 Evidence under this section is conclusive proof of the matter stated and of nothing else 45 P R 1898, 92 Ind Cas 577 This section is not applicable where the oath is not taken in the form under section 8 22 W R 387. This section is applicable in the case of an oral Will 84 Ind Cas 729 Special oaths can only be administered under s 8 without an undertaking of being bound by such an oath, it cannot be conclusive proof under s 11 of that Act 110 Ind Cas 131=A I R 1928 Bom 285=52 B 295

Appeal.—*Vide* 13 A 386

Time—When the oath was taken not at the appointed time but later, the onus lies on the person who relies on the oath to prove that the time is not the essence of the contract 52 Ind Cas 619

Variation in the form of the oath originally proposed, when accepted by the other party is not allowed 12 M L T 613

Form—Evidence to be conclusive must be taken in the form suggested by the other party 1885 A W N 188 In cases where the special "oath or solemn affirmation' is permitted by ss 8 9 and 10 of the Indian Oaths Act, it is not necessary to administer in addit on to ordinary oath or affirmat on referred to in s 5 54 I A 301=31 C W N 1053=A I R 1927 P C 165

For the application of this section it is necessary that the statement given by a referee should amount to 'evidence' of the fact in controversy between the parties 103 Ind Cas 348=A I R 1927 All 676 Where a party to a suit undertakes to abide by the oath taken by a particular person and that person merely takes the oath he can not afterwards say that he will not abide by the oath 98 Ind Cas 864=A. I R 1927 Lah 99 Party s refusal to take particular form of oath does not falsify his case A. I R, 1932 Lah 25

12 If the party or witness refuses to make the oath or solemn affirmation referred to in section 8 he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal

Procedure in case of refusal to make oath

Scope—In case of refusal the Court must note that the party was asked and he refused to take it 7 C P L R 122; 9 Mys L J 362 Asking a party whether he would take oath and no
are irregularities vitiating tr
bound by plaintiff's oath bu
the plaintiff should be given
he should be given a decree 109 Ind Cas 750

What amount to refusal—*Vide* 37 P L R 1903

Presumption—Refusal by a party can give rise to a presumption that his case is false 2 C L B 476 *contra* 93 Ind Cas 830=A I R 1926 Cal 817, 32 P L R 716 But no such presumption arises in case of refusal by a party s witness 4 N L R 50

V—Miscellaneous

13 No omission to take any oath or make any affirmation, no substitution of any one for any other of them and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission substitution or irregularity took place or shall affect the obligation of a witness to state the truth

Proceedings and evidence not invalidated by omission of oath or irregularity

Child—Evidence of a child taken without oath is admissible 5 Bom L R 515, 14 B L R 294, 24 C W N 767=32 C L J 31, 20 Bom L R 365, 38 A 49, 76 Ind Cas 1037

Sanction to Prosecute—In case of giving false evidence where it is not stated in the deposition that it was taken on solemn affirmation the defect was cured by this section 18 C W N 1323

Omission—It covers omission whether accidental or intentional 15 B 359, 14 B L R 294, 16 M 105, 41 C 406, 11 C P L R 16, 58 Ind Cas 817, 61 Ind Cas 705, 45 Ind Cas 495, 16 M 105, 14 B L R 54 2 L B R 322, but see 9 L, B R 88, 10 A 207, 36 Ind Cas 468 This section does not extend to intentional omission or affirmation of the oath 43 Ind Cas 86, 36 Ind Cas 468

This section cures the form of oath but does not cure the absence of authority in the officer administering it 116 Ind Cas 218=A L R 1929 Bom 136

14 Every person giving evidence on any subject before any Court or person hereby authorised to administer oaths and affirmations shall be bound to state the truth on such subject.*

Persons giving evidence bound to state the truth

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* See Act XLV of 1860, s 191

a decree can be passed even against the defendant who was not a party to the agreement 8 O W N 880=A I R 1931 Oudh 350, see also 118 Ind Cas 188

Minor—The next friend of a minor plaintiff can make such an offer P R 18 of 1891 (F B) So also the guardian of a minor defendant can 12 M 483, 12 M 503, 27 C 229; 21 A 25, 19 A L J 911, 102 Ind Cas 38

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Retraction—Before taking the oath is not allowed 1896 P J 347 This section does not allow a party to retract after the opponent has accepted the proposal 49 A 388=1927 All 593, 84 Ind Cas 723 If the party who agrees to be bound prevents ... decreed in his favour ... proceed on evidence ... s 144 Cr Pro Code ... M 259, 13 M L T 261 The principle that an offer can be withdrawn before it is accepted is applicable to an offer made under the Oaths Act 35 C W N 130=A I R 1931 Cal 549 The Court has discretion to allow retraction if good grounds are shown therefor 92 Ind Cas 813

Swearing with Ganges water in hand is sufficient compliance where the other party demands that 6 A L J 244, see also L R 5 A 147 (Rev) 1924 A 126

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Appeal—*Vide* 13 A 386

Time—When the oath was taken not at the appointed time but later the onus lies on the person who relies on the oath to prove that the time is not the essence of the contract 52 Ind Cas 619

Variation in the form of the oath originally proposed, when accepted by the other party is not allowed 12 M L T 613.

It is hereby enacted as follows :—

[illegible] enacted for India *mutatis* [illegible] 1889 (52 & 53 Vict c [illegible] communication to the [illegible] glo Russian agreement *Vide R.* v *Gruensy*, 1 F. & F 394 ; 337 Hansard Pal Deb 321 That Act dealt with two classes of offences (1) what is called *espionage* in obtaining secret information , (2) breach of official trust by persons in the service of the State The offences which the Indian Act was intended to reach were (1) the wrongful obtaining of information [illegible] India

Object of the Legislation "It has for some time passed been recognised that it is unsatisfactory to have two separate laws in force simultaneously in India Further although the British Act of 1911 is in force in India, difficulties arise in applying it because of the use in it of English Common law terms and so on For these reasons it is desirable that there should be a single consolidated Act applicable to India

"[illegible] 1911 are more effective, particularly in the [illegible] than the Indian enactments, and they [illegible] ctment of the amending statute of 1920, [illegible] War It is considered desirable there- [illegible] imilated to that in force in the United [illegible] onsolidate the provisions of the British Acts of 1911 and 1920, and to enact them in a form suitable for India

"As this Bill is purely a consolidatory measure, it is not necessary to deal with the clauses in detail but it may be mentioned that it is proposed to omit provisions on the lines of sections 4 and 5 of the Act of 1920 as is considered that the matters dealt with in these lines are sufficiently covered by the provisions of the Indian Telegraph Act 1885, and the Indian Post Office Act 1898'—*Statement of Objects and Reasons*

Short title, extent and application

1 (1) This Act may be called the Indian Official Secrets Act, 1923

(2) It extends to the whole of British India, and applies also—

(*a*) to all subjects of His Majesty and servants of the Crown within the dominions of princes and States in India in alliance with His Majesty , and

(*b*) to all Indian subjects of His Majesty without and beyond British India

Notes—The extra-territorial scope of the bill has been extended to include a class of persons for whom the Indian Legislature is competent to legislate—*Report of the Select Committee*

Definitions

2 In this Act, unless there is anything repugnant in the subject or context—

(1) any reference to a place belonging to His Majesty includes a place occupied by any department of the Government, whether the place is or is not actually vested in His Majesty ,

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document or information itself or the substance, effect or description thereof only be communicated or received , expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note or document , and expressions referring to the communication of any sketch, plan, model, article note or document

include the transfer or transmission of the sketch, plan, model, article, note or document ;

(3) "document" includes part of a document ;

(4) "model' includes design, pattern and specimen ,

(5) "munitions of war" includes the whole or any part of any ship, sub marine, aircraft, tank or similar engine, arms and ammunition torpedo or mine intended or adopted for use in war, and any other article, material or device, whether actual or proposed, intended for such use ,

(6) "office under His Majesty" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British possession ,

(7) "photograph includes an undeveloped film or plate ,

(8) "prohibited place ' means—

(*a*) any work of defence, arsenal, naval, military or airforce establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, His Majesty, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building repairing, making or storing any munitions of war, or any sketches plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war ,

(*b*) any place not belonging to His Majesty where any munitions of war or any sketches, models, plans or documents relating thereto are being made, repaired gotten or stored under contract with, or with any person on behalf of His Majesty, or otherwise on behalf of His Majesty ,

(*c*) any place belonging to or used for the purpose of His Majesty which is for the time being declared by the Governor Generel in Council by notification in the *Gazette of India*, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, in respect

ication by

connected

therewith) or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired or stored otherwise than on behalf of His Majesty which is for the time being declared by the Governor General in Council by notification in the *Gazette of India*, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality ,

(9) 'sketch" includes any photogragph or other mode of representing any place or thing , and

(10) 'Superintendent of Police' includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the Governor General in Council or by any Local Government

Clause 2 (7)—An inclusive definition of photograph had been inserted as sub-clause 7 and the definition of "officer under His Majesty has been enlarged to include expressly officers in the service of the United Kingdom as has been trans ferred to its proper place in the clause This has involved re numbering

Majesty are also used for any of the purposes mentioned in the last part of the definition

"In the [illegible] ified under (c) and [illegible] copy of the noti[illegible] thereto'—*Report* [illegible]

Penalties for spying

3 (1) If any person for any purpose prejudicial to the safety or interest of the State—

(*a*) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place ; or

(*b*) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy ; or

(*c*) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information, which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy ,

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or airforce establishment or station, mine, minefild, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of His Majesty or in relation to any secret official code, to fourteen years and in other cases to three years

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State , and if any sketch, plan model, article, note, document or information relating to or used in any prohibited place, or relating to any thing in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded published or communicated for a purpose prejudicial to the safety or interests of the State

Notes — Offences' under clause 3 (1) cover a very wide field and many of them even in their most aggravated form would not merit maximum penalty provided [illegible] maximums retaining the [illegible] us and introducing a [illegible] The line of distinction [illegible] en what we may call civil secrets on the one hand and secrets of defence on the other For the same reason we have removed the maximum penalty of three years altogether

The alterat on of the word "neighbourhood' to the word 'vicinity" is made because the latter word is used in clause 7 and it is desirable that the same word should be used in both clauses

Clause 3 (2) —"We have limited the application of the provisions of the first part of the sub clause which facilitate proof of a purpose prejudicial to the safety or interests of the State to fourteen years under the sub-clause (1) , and in respcet of those offences for which a special presumption was introduced in the second part of the sub clause we have limited the operation of that presumption by providing that it shall not be raised by the mere fact of the accused having improperly made, obtained, etc , a document of the nature covered by the s[illegible]

Report of the Select Committee

include the transfer or transmission of the sketch, plan, model, article, note or document;

(3) "document" includes part of a document;

(4) "model" includes design, pattern and specimen,

(5) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo or mine intended or adopted for use in war, and any other article, material or device, whether actual or proposed, intended for such use,

(6) "office under His Majesty" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British possession,

(7) "photograph" includes an undeveloped film or plate;

(8) "prohibited place" means—

(*a*) any work of defence, arsenal, naval, military or airforce establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, His Majesty, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war,

(*b*) any place not belonging to His Majesty where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of His Majesty, or otherwise on behalf of His Majesty,

(*c*) any place belonging to or used for the purpose of His Majesty which is for the time being declared by the Governor Generel in Council, by notification in the *Gazette of India*, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, in respect

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therewith) or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired or stored otherwise than on behalf of His Majesty, which is for the time being declared by the Governor General in Council by notification in the *Gazette of India*, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or

ch a copy of the

the vernacular

(9) "sketch" includes any photogragph or other mode of representing any place or thing; and

(10) 'Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the Governor General in Council or by any Local Government

Clause 2 (7)—An inclusive definition of "photograph" had been inserted as sub clause 7 and the definition of "officer under His Majesty has been enlarged to include expressly officers in the service of the United Kingdom as has been transferred to its proper place in the clause This has involved re numbering

Clause 2 (8)—"The defi[illegible]
view to applying it in respect
and telephones, and in respect
dockyards which besides bel

(*d*) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan model, article, note, document, secret official code or pass word or information,

he shall be guilty of an offence under this section

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it that the code, pass word, sketch, plan, model article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section

(3) If any person having in his possession or control any sketch, plan, ... ates to munitions of war ... power or in any other ... he shall be guilty of an offence under this section

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both

'Clause 5 (1)—In (a) we have inserted the word 'wilfully' as we do not think that negligent communications should be punishable except to the extent to which it is punishable under (d) We have made a similar insertion in (e) for the same purpose We have also inserted the words 'or in a Court of Justice in order to protect public officers who have used their discretion under section 124 of the Indian Evidence Act

'Clause 5 (2)—We have thought it right to shift the burden of proof that the receipt was voluntary one to the prosecution—*Report of the Select Committee*

Unauthorised use of uniforms, falsification of reports forgery, personation and false documents

6 (1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

(*a*) uses or wears without lawful authority any naval military airforce, police or other official uniform or any uniform so nearly resembling the same as to be calculated to deceive or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform, or

(*b*) orally or in writing in any declaration or application or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission, or

(*c*) forges alters or tampers with any passport or any naval, military, air force, police or official pass permit certificate, license or other document of a similar character (hereinafter in his section referred to as an official document) or knowingly uses or has in his possession any such forged, altered or irregular official document or

(*d*) personates or falsely represents himself to be a person holding or in the employment of a person holding office under His Majesty or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated or with intent to obtain an official document secret official code or pass word, whether for himself or any other person, knowingly makes any false statement, or

(*e*) uses or has in his possession or under his control without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used made or provided by any department of the Government or by any diplomatic, naval, military or air force authority ... e authority or His Majesty, or any die seal or ... such die, seal or stamp, as to be calculated to ... die, seal or stamp, or knowingly uses, or has

in his possession or under his control, any such counterfeited die, seal or stamp,

he shall be guilty of an offence under this section

(2) If any person for any purpose prejudicial to the safety of the State—

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, or, without lawful authority or excuse, has in his possession any [illegible] pass word issued for the use of some possession of any official document restore it to the person or authority to a police officer, or

(c) without lawful authority or excuse, manufactures or sells, or has in his

[illegible]

be punishable with imprisonment for a term which may extend to two years, or with fine, or with both

(4) The provisions of sub section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force

[illegible]

ment for a term which may extend to fourteen years

[illegible] rdinary penal law provides a sufficient created by this clause and we accor this clause should only be enforceable e have therefore struck out the words 'or interest in sub clauses (1), (2) and (4)

'Clause 6 (2)—We consider that in respect of all offences created by sub-clause (2) it should be necessary for the prosecution to prove that the acts complained of were done for a purpose prejudicial to the safety of the State For the insertion of of word 'wilfully' compare note on clause 5 (1)"—*Report of the Select Committee*

Interfering with officers of the police or members of His Majesty's forces

7 (1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place

(2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

Notes—'Clause (2)—The amendment is of a drafting nature only'—*Report of the Select Committee*

Duty of giving information as to commission of offences

8 (1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police officer not below the rank of Inspector, empowered by an Inspector General or Commissioner of Police in this behalf, or to any member of His Majesty's forces engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with

section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both

Clause 8 (1)—'We have limited the duty of giving information on demand of various persons to the graver offences under the Bill'—*Report of the Select Committee*

Attempts, incitements, etc

9 Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence

Penalty for harbouring spies

10 (1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section

(2) It shall be the duty of every person having harboured any such a person as aforesaid or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector empowered by an Inspector General or Commissioner of Police in his behalf, any information in his power relating to any such person or persons and if any person fails to give any such information, he shall be guilty of an offence under this section

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both

Notes—'We have recast clause (10) to make it clear that it creates two separate offences and we have removed the ambiguity caused by the use of the words omits or refuses' and have required that the information shall be given on demand to the police officer who may demand it under clause (8)—*Report of the Select Committee*

Search warrants

11 (1) If a Presidency Magistrate, Magistrate of the first class or Sub divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed

y police officer named therein
of a police station to enter at
varrant, if necessary, by force,
and to search the premises or place and every person found therein, and to seize
any sketch pl
or anything wl
about to be co
person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed

(2) Where it appears to a police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by the warrant of a Magistrate under this section

(3) Where action has been taken by a police officer under sub section (2) he shall, as soon as may be, report such action, in a Presidency Town to the

Chief Presidency Magistrate, and outside such town to the District or Sub-Divisional Magistrate

Notes — The amendment is necessary, first, to give power under this clause to Presidency Magistrates who though they exercise powers of the same nature as Magistrates of the first class do not come within the description and secondly, to give powers to Sub-divisional Magistrates who may be Magistrates of the second class We have added a new sub clause to provide for report to the Magistrate where in a case of emergency the police officer has taken action under sub clause (2) —*Report of the Select Committee*

Power to arrest

12 Notwithstanding anything in the Code of Criminal Procedure, 1898—

(*a*) an offence punishable under section 3 or under section 3 read with section 9 with imprisonment for a term which may extend to fourteen years shall be a cognizable and non bailable offence ,

) of sub section (1) of section 6 shall be a

r this Act shall be a non cognizable and bailable offence, in respect of which a warrant of arrest shall ordinarily issue in the first instance

warrant should ordinarily

Restriction on trial of offences

13 (1) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the Local Government) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court

(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of or under authority from, the Governor General in Council Local Government, or some officer empowered by the Governor General in Council in this behalf

Provided that a person charged with such an offence may be arrested or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in British India in which the offender may be found

Notes — 'The Committee have proposed no change in this clause but as Mr Neogy has intimated that he proposes to dissent on the ground that all offences under the Act should be triable only by a Court of Session, the Committee think it right to express their views in favour of retaining the clause as it stands Under the Indian Official Secrets Act 1889 all Magistrates of the first class were authorized to try offences under the Act while under the Bill it is provided that the only Magistrate who may try cases shall be those described in sub clause (1) of this clause Mr Neogy relies on section 3 of the Official Secrets Act, 1911, in which it is laid down that an offence under the Act shall not be tried by any Court outside the United Kingdom which has no jurisdiction to try crimes which involves the greatest punishment allowed by law As the Bill stands, read with the second schedule to

the Code of Criminal Procedure the graver offences punishable under section 3 with imprisonment up to 14 years will be triable only by Courts of Session; and the Committee are of opinion that the other offences under the Act can properly be [illegible]

the Attorney General and at the same time they do not forget that a person brought up for summary trial can claim to be tried at the assizes They have also observed that on a trial under the Summary Jurisdiction Act, the maximum sentence of imprisonment is three months even though on a trial for the same offence at the assizes on indictment the maximum sentence for the same offence is two years In the opinion of the committee the decisive factor should be that this Bill sets out to adapt the provisions of the English Acts of 1911 to 1920 to Indian conditions and the Indian Legislature is the best judge as to the capacity of Magistrates in British India to try cases under the Act"—*Report of the Select Committee*

Exclusion of public from proceedings

14 (1) In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this [illegible] or in the course of the trial of a person, und [illegible] by the prosecution, on the ground that the [illegible] given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of th hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public

Notes —The Court has been invested with the powers to hold the trial in camera for reasons of State But the sentence in all cases must be pronounced in public

Offences by Companies, etc

15 Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence

Notes —"We have thought it right to shift the burden of proving knowledge and consent on the prosecution"—*Report of the Select Committee*

16 [*Repeals.*] Repealed by s 2 and sch of Act XII of 1927.

THE OFFICIAL TRUSTEES ACT, 1913

ACT NO II OF 1913.

RECEIVED THE G-G'S ASSENT ON THE 27TH FEBRUARY, 1913

An Act to consolidate and amend the Law constituting the office of Official Trustee

WHEREAS it is expedient to consolidate and amend the law constituting the office of the Official Trustee, It is hereby enacted as follows :—

Notes —"The revision of the law relating to the office of Administrator General has necessitated revision of the law relating to the office of Official Trustees Many of the provisions of the existing law already apply *mutatis mutandis* to both offices, and it is considered desirable further to approximate the constitution of these offices and the conditions of their tenures as closely as possible since their duties will be normally discharged by the same person The existing law relating to the office of the Official Trustee is contained in the Official Trustees Act XVII of 1864 the Probate and Administration Act II of 1890, and the Administrator Generals and Official Trustees Act V of 1922 The trend of this legislation has as in the case of the legislation relating to the Administrator General been to substitute for a class of Official Trustees remunerated by commission a class of salaried officials whose liabilities are undertaken by the Government In return for fees credited to

the Government The draft Bill carries this process a stage further and does away

... has been passed, and consideration of some of the provisions of that statute has enabled useful amendments to be made in the Indian law The Bil further deals with the qualifications for appointment of Official Trustees, fees, the rule making power and similar matters on the same line as those explained in connection with the Bill relating to the office of Administrator General Opportunity has been taken to make several minor amendements in the law and to consolidate the enactments relating to the Official Trustee The more important of the changes are explained in the table of distribution annexed to the Bill and in the no es annexed thereto' —*Statement of Objects and Reasons*

PART I

PRELIMINARY

Short title, extent and commencement

1 (1) This act may be called the Official Trustees Act, 1913

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas and applies also to all British and Indian subjects of His Majesty in the territories of Native States in India

(3) It shall come into force on such date as the Governor General in Council, by notification in the *Gazette of India*, may direct

Interpretation clause

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) "Government" means the Governor General in Council, so far as the Act relates to the Presidency of Bengal, and the Local Governments of Madras and Bombay, respectively, so far as the Act relates to those Presidencies

(2) "High Court" means His Majesty's High Courts of Judicature at Fort William in Bengal, Madras and Bombay, respectively, in the exercise of their original civil jurisdiction

... Bengal, the ... *t St George* ... *Government* ... Gazette.

(4) "Prescribed" means prescribed by rules under this Act:

(5) (*a*) "Presidency of Bengal' includes the territories for the time being under the government of the Governor of Fort William in Bengal in Council, the United Provinces of Agra and Oudh, the Provinces of the Punjab, Burma, Bihar and Orissa, the Central Provinces, Assam, the North West Frontier Province, the Province of Delhi, Ajmer and Merwara, the Andaman and Nicobar Islands, and such of the territories of any Native State as the Governor General in Council may by notification in the *Gazette of India* direct,

(*b*) "Presidency of Bombay" includes the territories for the time being under the government of the Governor of Bombay in Council, the Province of British Baluchistan ... State as the Governor G... *India* direct,

(*c*) ... time being under the Government of the Governor of Fort St George in Council, the Province of Coorg, and such of the territories of any Native State as the Governor General in Council may by notification in the *Gazette of India* direct:

(6) "Presidency" means any of the Presidencies mentioned in clause (5).

(7) ["revenues of the Government" means, in respect of any part of India in which the powers and duties of the Government under this Act are exercised and discharged by a Local Government, the revenues allocated to that Government under the Government of India Act]*

Notes —[illegible] 'Government", 'Official Gazette" [illegible] cy of Bombay,' 'Presidency of [illegible] overnment,' *Vide* also the Ad- [illegible]

Extent of jurisdiction of High Courts

3 For the purposes of this Act the High Court at a Presidency town shall have jurisdiction throughout the Presidency.

PART II.

THE OFFICE OF OFFICIAL TRUSTEE

Official Trustees

4 (1) In each of the Presidencies of Bengal, Madras and Bombay, the Government shall appoint an Official Trustee

(2) No person shall be appointed to the office of Official Trustee of any of the said Presidencies who is not—

(a) a Barrister ; or

(b) an Advocate, Attorney or Vakil enrolled by a High Court , or

(c) a person holding the office of Deputy Administrator General at the commencement of this Act

(3) The said Official Trustees shall be called respectively the Official Trustee of Bengal, the Official Trustee of Madras and the Official Trustee of Bombay

Notes —This section corresponds to section 3 of the Administrator General's Act, (III of 1913) The Official Trustee is a Government Officer appointed by Government and liable to be removed by Government The Official Trustee as such should no be appointed the guardian of the property of a minor 108 Ind Cas 495= 30 Bom L R 177=A I R 1928 Bom 69

Appointment and powers of Deputy Official Trustee

5 The Government may appoint a Deputy or Deputies to assist the official Trustee , and Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Official Trustee be competent to discharge any of the duties and exercise any of the powers of the Official Trustee and, when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Official Trustee

Notes —By this section provision is made for the appointment of Deputy Official Trustee Powers to be exercised by the Deputy Official Trustee are also mentioned in this section

Official Trustee to be corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name

6 The Official Trustee shall be a corporation sole by the name of the Official Trustee of the Presidency for which he is appointed and, as such Official Trustee, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name

Corporation sole —Corporations are usually classified under two heads viz, corporations sole and corporations aggregate As a corporation according to *Lord Coke is* ' invisible and immortal, it has no soul, neither it is subject to the imbecilities

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* The words within brackets have been inserted by Act 21 of 1922

of the body The c . . . . and its capacity for indefini . . . ller on *Corporation Ch I* . . . name, (2) an official seal . . . anger's *Municipal Corporation*, p 2

PART III

Rights, Powers, Duties and Liabilities of Official Trustee

General powers and duties of Official Trustee

7 (1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,—

(a) act as an ordinary trustee ;

(b) be appointed trustee by a Court of competent jurisdiction

(2) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties and liabilities and be entitled to the same rights and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity

(3) The Official Trustee may decline, either absolutely or except on such conditions as he may impose, to accept any trust

(4) The Official Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors, nor of any estate known or believed by him to be insolvent

(5) The Official Trustee shall not save as provided by any rules made under this Act, accept any trust for any religious purpose or any trust which involves the management or carrying on of any business

(6) The Official Trustee shall not administer the estate of a deceased person, unless he is expressly appointed sole executor of, and sole trustee under, the Will of such person

(7) The Official Trustee shall always be sole trustee, and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person

. . n 2 of the Public Trustees Act, 1906 also he may (1) act as an ordinary

Sub section (2)—Cf sub section (2) of section 2 of the Public Trustees Act, 1906 (6 Edw VII C 55)

Official Trustee may with consent be appointed trustee of settlement by grantor

8 (1) Any person intending to create a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act may by the instrument creating the trust and with the consent of the Official Trustee, appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee

(2) Upon such appointment the property subject to the trust shall vest in such Official Trustee, and shall be held by him upon the trusts declared in such instrument

Notes—This section corresponds to section 5 of sub section 1 of the Public Trustees Act See also *Re Kensit*, (1908) W N 235

Appointment of Official Trustee as trustee by Will

9 When the Official Trustee has by that name or any other sufficient description been appointed trustee under any Will, the executor of the Will of "the" testator* or the administrator of his estate shall, after obtaining

* The word within quotations has been substituted by Act 18 of 1919

probate or letters of administration, notify in the prescribed manner the contents of such Will to such Official Trustee, and, if such Official Trustee consents to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust to the Official Trustee, such property shall vest in such Official Trustee, and shall be held by him upon the trusts expressed in the said Will

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee

Notes—It was not open to a testator to appoint the Offical Trustee as constituted by Act XVII of 1864 as executor of his Will, and if he were so appointed he would not be entitled by virtue of his office and in his character as Official Trustee and in the name of the Official Trustee, to have a grant 7 Ind Cas 247 see also 32 C 387=6 Ind Cas 973

Power of High Court to appoint Official Trustee to be trustee of property

10 (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and there is no trustee within the local limits of the ordinary or extrordinary original civil jurisdiction of the High Court willing or capable to act in the trust the High Court may on application make an order for the appointment of the Official Trustee by that name with his consent to be the trusee of such property

(2) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such order and the previous trustee or trustees (if any) shall be exempt from liability as trustees of such property save in respect of acts done before the date of such order

(3) Nothing in this section shall be deemed to affect the provisions of the Trustees and Mortgagees' Powers Act 1866* or the Indian Trusts Act 1882†

Power of private trustees to appoint Offical Trustee to be trustee of property

11 (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees it shall be lawful for such trustee or trustees, by an instrument in writing to appoint the Official Trustee by that name or any other sufficient description with his consent to be the trustee of such property

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by him

(2) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment

Executor or administrator may pay to Official Trustee legacy share etc of infant or lunatic

12 (1) If any infant or lunatic is entitled to any gift legacy or share of the assests of a deceased person it shall be lawful for the person by whom such gift is made or executor or administrator by whom such legacy or share is payable or transferable, or any trustee of such gift legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient de

Provided that the said instrument and ... shall be recited in the ... executed by the Official Trustee

* Act 28 of 1866

† Act 2 of 1882

(2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee

Official Trustee not to be required to give bond or security

13 (1) No official Trustee shall be required by any Court to enter into any bond or security on his appointment in any capacity under this Act

(2) No Official Trustee or Deputy Official Trustee shall be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act and if the facts stated in any such petition are not within the Official Trustee s personal knowledge, the petition may be verified and subscribed by any person competent to make the verification

Notes —This section corresponds to section 11, sub section 3 of the English Public Trustees Act

Entry of official Trustee not to constitute notice of a trust

14 The entry of the Official Trustee by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation, and in dealing with property, the fact that the person dealt with is the Official Trustee shall not of itself constitute notice of a trust

Notes —This section corresponds to section 11, sub section 5 of the Public Trustees Act

Liability of Government

15 (1) The revenues of the Government* shall be liable to make good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted and in either of those cases the Official Trustee shall not nor shall the revenues ' of the Government or'' † of the Government of India, be subject to any liability

(2) Nothing in sub section (1) shall be deemed to render the revenues ' of the Government or † of the Government of India or any Official Trustee appointed under this Act liable for anything done by or under the authority of any Official Trustee before the commencement of this Act

Duties of [illegible]
a state of secu[illegible]
reduced into [illegible]

[illegible] C P Cooper s Cases 1837 1838 481, *Jones* v *Ogle* 8 L R Ch 711 *M Gaclen* v *Dex*, 15 rew 258 *Waring* v *Waring* 3 Ir Ch Rep 335, *Gaore* v *Price* 26 Beav 103 In *Harden* v *Parsons* 1 Eden 148 *Lord Northington* observed 'No man can require or with reason expect that a trustee should manage another s property with the same care and discretion that he would his own' But the maxim has never failed as often as mentioned to elicit strong marks of disapprobation and now it is [illegible] requires from a trustee the same [illegible] his office that a man of ordinary [illegible] own affairs *Learoyd* v *Whiteley*, [illegible] as 753, *Pael* v *Meek*, 14 App Cas [illegible] *Gummoe* 7 L R Ch App 720,

* Certain words after this repealed by Act 21 of 1922 have been omitted
† The words within quotations have been inserted by Act 21 of 1922

Jones v *Lewis*, 2 Ves 241, *Makey* v *Bunner*, 1 J & W 247 *Attorney General* v *Dixie* 13 Ves 534, *Re Speight* 22 Ch D 739 Express trust for conversion should be strictly pursued *Craven* v *Craddock*, 20 L T N S 638 A trustee may not invest the trust fund in the stock of any private company *Trafford* v *Boehm*, 3 Atk 440.

16 Nothing in section 80 of the Code of Civil Procedure 1908 * shall apply to any suit against the Official Trustee in which no relief is claimed against him personally

Notice of suit not required in certain cases

Notes —Where the suit is against an Official Trustee personally the provision of section 80 of the Civil Procedure applies This section corresponds to section 41 of the Administrator General s Act, 1913

PART IV

Fees

17. (1) There shall be charged in respect of the duties of the Official Trustee such fees whether by way of percentage or otherwise as the Government may prescribe

Fees.

Provided that in the case of a trust accepted by the Official Trustee before the commencement of this Act the fees prescribed under this section shall not exceed the fees leviable in respect of such trust under the Official Trustees Act, 1864,† as subsequently amended

(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may determine to be required to insure the revenues of the Government ‡ against loss under this Act)

Notes —*Vide* 31 C 572, 43 M L J 347=74 Ind Cas 182 4 C 770, 25 C 65, 1 M 148

18 (1) All expen es

Disposal of fees

this Act shall be retained or paid in like manner as and in addition to such expenses

(2) The Official Trustees shall transfer and pay to such authority and in such manner and at such times as the Government may prescribe all fees received by him under this Act‡ and the same shall be carried to the account and credit of the Government

Notes —*Cf* section 43 of the Administrator General s Act, 1913 Under that section the Administrator General has the same right of retainer in satisfaction of his own debt as that which an ordinary executor or administrator has *Ritchie* v *Stokes* 2 Mad 255

PART V

Audit

19 (1) The accounts of the Official Trustees shall be audited at least once annually and at any other time if the Government so direct by the prescribed person and in the prescribed manner

Auditors to be appointed to examine Official Trustee s accounts etc, and to report to Government

* Act 5 of 1908
† Act 17 of 1864
‡ Certain words after this repealed by Act 21 of 1922 have been omitted

(a) whether the accounts contain a full and true account of everything which ought to be contained therein and

(b) whether the books, which by any rules made under this Act are directed to be kept by the Official Trustee, have been duly and regularly kept, and

(c) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or any rules made thereunder,

or (as the case may be) that such accounts are deficient, or that the Official Trustee has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate

... nnually by the person prescribed ... *Vide* also Rule 23 framed under

Auditor s power to summon witnesses and to call for documents

20 (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure, 1908 *

(a) to summon any person whose presence he may think necessary to attend him from time to time, and

(b) to examine any person, on oath to be by him administered, and

(c) to issue a commission for the examination on interrogatories or otherwise of any person, and

(d) to summon any person to produce any document or thing the production of which appears to be necessary for the purposes of such audit or examination

(2) Any person who when summoned refuses, or without reasonable cause neglects to attend or to produce any document or thing or attends and refuses to be sworn or to be examined shall be deemed to have committed an offence within the meaning of, and punishable under section 188 of the Indian Penal Code, and the auditor shall report every case of such refusal or neglect to Government

Notes—Under this section the auditor is given wide powers He is invested with the powers of a Civil Court under the Civil Procedure Code to summon and examine witnesses on oath He can also issue a commission for the examination of any person and can summon any person to produce any document Any person who refuses to attend or to be sworn is punishable under section 188 of the Indian Penal Code Every facility is given to an auditor for successfully auditing the accounts

Costs of audit, etc, how paid

21 The cost of and incidental to every such audit and examination shall be determined in accordance with rules made by the Government and shall be defrayed in the prescribed manner

Right of beneficiary to inspection and copies of accounts

22 Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust and the report and certificate of the auditor and, on payment of the prescribed fee to be furnished with copies thereof or extracts therefrom and nothing in the Indian Trusts Act 1882, shall affect the provisions of this section

Notes—The beneficiaries have the right to inspect the account and if they pay the prescribed fees they will be furnished with copies of the accounts

* Act V of 1908

Part VI

Miscellaneous.

Transfer to Government of accumulations in the hands of Official Trustees

23. When any money payable to a beneficiary under a trust have been in the hands of any Official Trustee for a period of twelve years or upwards whether before or after the commencement of this Act in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such money shall be transferred in the prescribed manner to the account and credit of the Government *

Provided that no such moneys shall be so transferred if any suit or proceeding is pending in respect thereof in any Court

Mode of proceeding by claimant to recover money so trasferred

24 (1) If any claim is made to any moneys so transferred and such claim is established to the satisfaction of the prescribed authority, the Government* shall pay to the claimant the amount in respect of which the claim is established

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other such moneys apply by petition to the High tate for India in Council, and, after taking Court shall make such order on the petition in regard to the payment of such moneys as it thinks fit, and such order shall be binding on all parties to the proceedings

(3) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid

Power of High Court to make orders in respect of property vested in Official Trustee

25 The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or the interest or produce thereof

Who may apply for order under Act

26 Any order under this Act may be made, on the application of any person beneficially interested in any trust property or of any trustee thereof

Order of Court to have effect of a decree

27 Any order made by a High Court under this Act shall have the same effect as a decree

General powers of administration

28 The Official Trustee may in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure—

(a) on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him, and

(b) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

Notes—Even under the old law although a trustee is allowed nothing for his his expenses out of pocket *How* v *Godfrey*, 190, *Hide* v *Haywood*, 2 Atk 126, *Caffesy* v *Watson*, 3 Atk 578, *Feoffer of Heriot's Hospital* *'arrald* v *Clarks* 8 Ves 81 *Lord Eldon* said 'It

* Certain words after this repealed by Act 21 of 1922 have been omitted.

Transfer of trust property by Official Trustee to original trustee or any other trustee

29 (1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

(a) the original trustee (if any), or
(b) any other lawfully appointed trustee, or
(c) any other person if the Court so directs

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer

Provided that, in the case of any transfer under this section the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act

Rules

30 (1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the accounts to be kept by the Official Trustee and the audit and inspection thereof,

(b) the safe custody, and deposit of the funds and securities which come into the hands of the Official Trustee,

(c) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required,

(d) the statements schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements schedules or other documents,

(e) the realization of the costs of preparing any such statements, schedules or other document,*

(f) subject to the provisions of this Act, the fees to be paid thereunder

ɔ fixed,

whom the costs of and inci

this Act are to be determined and defrayed,

(h) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination

(i) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business, and

(j) any matter in this Act directed to be prescribed

(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act

Division of Presidency into Provinces

31 ( ) Notwithstanding anything in the foregoing provisions of this Act the Governor General in Council may by notification in the *Gazette of India*—

(a) remove any of the territories included in the Presidency of Bengal from such Presidency and constitute the same into Provinces for the purposes of this Act,

(b) direct that for the purposes of this Act any of the territories of any Native State in India shall be included in any Province so constituted, and

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* Sub clause (ee) was inserted by Act 10 of 1914 but was repealed by Act 5 of 1917 and hence it is omitted

(c) appoint any person qualified in accordance with the provisions of sub section (2) of section 4, or who holds office under Government to be an Official Trustee for any such Province to be called the Official Trustee of the Province

and subject to the provisions of this section the following consequences shall thereupon ensue namely —

(i) the Official Trustee of a Province shall by that name have the like rights powers privileges and liabilities and perform the like duties in the Province as the Official Trustee of the Presidency within which such territories were included had and performed as Official Trustee therein and shall be deemed to be his successor in office

(ii) the powers and duties of the Government under this Act shall as regards the Province be exercised and discharged by the Governor General in Council, or by such Local Government as the Governor General in Council may by notification in the *Gazette of India* appoint in this behalf, and the Gazette of the Government exercising and discharging such powers and duties shall be the Official Gazette of the Province for the purposes of this Act

(iii) the powers and duties assigned by the foregoing provisions of this Act to the High Court shall be exercised and discharged in respect of such Province by such Court as the Governor General in Council may by notification in the *Gazette of India* appoint in this behalf

(iv) in the foregoing provisions of this Act the word Presidency shall be deemed to include a province and

(v) generally the provisions of the fore oing sections with respect to the High Court and the provisions of this Act and of any other enactment for the time being in force with respect to the Official Trustee of a Presidency shall in relation to a Province be construed so far as may be to apply to the Court and the Official Trustee respectively appointed for the Province under this section

(2) Any proceeding which was commenced before the publication of the notification constituting the province and to or in which the Official Trustee of any Presidency within which any territories constituted into a Province are situate was a party or was otherwise concerned shall be continued as if the notification had not been published

(3) If by reason of the constitution of provinces for the purposes of this Act it appears to the Governor General in Council that any property vested in the Official Trustee of any Presidency should be vested in the Official Trustee of a Province he may direct that the property shall be so vested and thereupon it shall vest in the Official Trustee of the Province as fully and effectually for the purposes of this Act as if it had originally been vested in him under this Act

(4) If in accordance with the provisions of this section territories have been removed from the Presidency of Bengal and constituted a Province for the purposes of this Act the Governor General in Council may by notification in the *Ga ette of India* direct that as regards the Presidency of Bengal excluding the territories so removed the powers and duties of the Government under the Act shall be exercised and discharged by the Local Government of Bengal and that the official Gazette shall be *the Calcutta Ga ette*

(5) Upon the rescission of a notification constituting a Province under sub-section (1) the territories comprised therein shall again form part of the Presidency within which they were originally included the office of Official [illegible]

Transfer of trust property by Official Trustee to original trustee or any other trustee

29 (1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

(a) the original trustee (if any), or
(b) any other lawfully appointed trustee, or
(c) any other person if the Court so directs

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as *trustee of such property except in respect of acts done before such transfer*

Provided that in the case of any transfer under this section the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act

Rules

30 (1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the [illegible] ustee in the [illegible]

(2) In particular and wi [illegible] the foregoing power, such rules may provide for—

(a) the accounts to be kept by the Official Trustee and the audit and inspection thereof,

(b) the safe custody, and deposit of the funds and securities which come into the hands of the Official Trustee,

(c) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required,

(d) the statements schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements schedules or other documents,

(e) the realization of the costs of preparing any such statements, schedules or other document,*

(f) subject to the provisions of this Act, the fees to be paid thereunder and the collection and accounting for any fees so fixed,

(g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,

(h) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination

(i) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business; and

(j) any matter in this Act directed to be prescribed

(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act

Division of Presidency into Provinces

31 (1) Notwithstanding anything in the foregoing provisions of this Act the Governor General in Council may by notification in the *Gazette of India*—

(a) remove any of the territories included in the Presidency of Bengal from such Presidency and constitute the same into Provinces for the purposes of this Act,

(b) direct that for the purposes of this Act any of the territories of any Native State in India shall be included in any Province so constituted, and

* Sub clause (ee) was inserted by Act 10 of 1914 but was repealed by Act 5 of 1917 and hence it is omitted

II.—Of Marriages between Parsis.

Requisites to validity of Parsi marriages

3. No marriage contracted after the commencement of this Act shall be valid if the contracting parties are related to *each other in any of the degrees of consanguinity* or affinity prohibited among Parsis and set forth in a table* which the Governor General of India in Council shall after due enquiry, publish in the *Gazette of India,* and unless such marriage shall be solemnized according to the Parsi form of ceremony called "Asirvad" by a Parsi priest in the presence of two Parsi witnesses independently of such officiating priest, and unless, in the case of any Parsi who shall not have completed the age of twenty one years, the consent of his or her father or guardian shall have been previously given to such marriage.

Certificates by Priest—A certificate to be given by the officiating priest under this section is not in itself one of the requisites for a valid marriage 45 B 146, 58 Ind Cas 91

Marriage during minority—Marriage is valid even if contracted during minority, when the marriage ceremony was performed with the formal or tacit consent of the guardians of the parties 13 B 302

Limitation—Limitation for suit for restitution of conjugal rights under the Act is enforceable only in the manner provided in s 36 and such provision is in substitution of and not in addition to the ordinary remedies provided by the Civil Procedure 9 B H C R 290

Re marriage save after divorce unlawful during lifetime of first wife or husband

4 No Parsi shall, after the commencement of this Act, contract any marriage in the lifetime of his or her wife or husband, except after his or her lawful divorce from such wife or husband, by sentence of a Court as hereinafter provided

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* The following Table was published in the *Gazette of India* of the 9th September, 1865, pp 981, 982 —

TABLE

A man shall not marry his—

1 Paternal grand father's mother
2 Paternal grand mother's mother
3 Maternal grand father's mother
4 Maternal grand mother's mother
5 Paternal grand mother
6 Paternal grand father's wife
7 Maternal grand mother
8 Maternal grand father's wife
9 Mother or step mother
10 Father's sister or step sister
11 Mother's sister or step sister
12 Sister or step sister
13 Brother's daughter or step brother's daughter, or any direct lineal descendant of a brother or step brother
14 Sister's daughter or step sister's daughter, or any direct lineal descendant of a sister or step sister
15 Daughter or step daughter or any direct lineal descendant of either
16 Son's daughter or step son's daughter or any direct lineal descendant of a son or step-son
17 Wife of son or of step son or of any direct linean descendant of a son or step son
18 Wife of daughter's son or of step-daughter's son, or of any direct lineal [illegible]

and every marriage contracted contrary to the provisions of this section shall be void.

Punishment of bigamy

5 Every Parsi who shall, after the commencement of this Act and during the life time of his or her wife or husband, contract any marriage without having been lawfully divorced from such wife or husband shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.

Certificate and registry of marriages

6 Every marriage contracted after the commencement of this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in the schedule to this Act

The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when thay shall not have completed the age of twenty one years and two witnesses present at the marriage, and the said priest shall thereupon send such certificate, together with a fee of two rupees to be paid by the husband, to the Registrar of the place at which such marriage is solemnized

The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee

Appointment of Registrars

7 For the purposes of this Act a Registrar shall be appointed *

Within the local limits of the ordinary original civil jurisdiction of a High Court the Registrar shall be appointed by the Chief Justice of such Court, and without such limits, by the Local Government Every Registrar so appointed may be removed by the Chief Justice or Local Government appointing him

Marriage register to be open for public inspection

8 The register of marriages mentioned in section 6 shall at all reasonable times, be open for inspection and certified extracts therefrom shall, on application, be given by the Registrar on payment to him by the applicant of two rupees for each such extract

Every such register shall be evidence of the truth of the statements therein contained

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23 [illegible]
24
25
26
27
28 Wife's father's sister
29 Wife's mother's sister
30 Father's brother's wife
31 Mother's brother's wife
32 Brother's son's wife
33 Sister's son's wife

A woman shall not marry her—

1 Paternal grand father's father
2 Paternal grand mother's father
3 Maternal grand father's father
4 Maternal grand mother's father
5 Paternal grand father
6 Paternal grand mother's husband.
7 Maternal grand father
8 Maternal grand mother's husband
9 Father or step father
10 Father's brother or step-brother

* Here certain words have been repealed by Act 14 of 1870

Transmission of certified copies of certificates in marriage register to Registrar General of Births Deaths and Marriages

8A * Every Registrar, except the Registrar appointed by the Chief Justice of the High Co... of ... c ... t ... c ... Deaths and Marriages for the territories administered by 'such Local Government † a true copy, certified by him in such form as "such Local Government' † from time to time, prescribes of all certificates entered by him in the said register of marriages since the last of such intervals

Penalty for solemnizing marriage contrary to section 4

9 Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of section 4 shall on conviction thereof, be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both

Penalty for priests neglect to requirements of section 6

10 Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both

Penalty for omitting to subscribe and attest certificate

11. Every other person required by section 6 to subscribe or attest the said certificate who shall wilfully omit or neglect so to do, shall on conviction thereof be punished for every such offence with a fine not exceeding one hundred rupees

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11 Mother's brother or step brother
12 Brother or step brother
13 Brother s son or step brother s son or any direct lineal descendant of a brother or step brother
14 Sister s son or step sister s son or any direct lineal descendant of a sister or step sister
15 Son or step son or any direct lineal descendant of either
16 Daughter s son or step daughter's son, or any direct lineal descendant of a daughter or step daughter
17 Husband of daughter or of step daughter or of any direct lineal descendant of a daughter or step daughter
18 Husband of son s daughter or of step son s daughter or of any direct lineal descendant of a son or step son
19 Father of daughter s husband
20 Father of son s wife
21
22
23
24
25
26
27
28 Brother of husband s father
29 Brother of husband s mother
30 Husband s brother s son or his direct lineal descendant
31 Husband s sister s son or his direct lineal descendant
32 Brother s daughter s husband
33 Sister s daughter s husband

Notes —In the above table the words brother and 's sister ... sister of the whole as well as of half blood Relationship by step me... by marriages

* S 8A has been inserted by Act VI of 1886 s 31

† The words within quotations have been substituted by Act 3...

12 Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the Indian Penal Code,* and shall be liable on conviction thereof, to the penalties provided in section 466 of the said Code

Penalty for making &c, false certificate

13. Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both

Penalty for not registering certificate

14 Any person secreting, destroying or dishonestly or fraudulently altering the said register in any part thereof shall be punished with imprisonment of either description as defined in the Indian Penal Code* for a term which may extend to two years, or, if he be a Registrar for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees

Penalty for secreting destroying or altering register

III—Of Parsi Matrimonial Courts

15 For the purposes of hearing suits under this Act, a special Court' shall be constituted in each of the presidency towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit

Constitution of special Courts under Act

16 The Court so constituted in each of the presidency towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be

Parsi Chief Matrimonial Courts

The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court

The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by eleven delegates

17 Every Court so constituted at a place other than a presidency town shall be entitled the Parsi District Matrimonial Court of such place

Parsi District Matrimonial Court

Subject to the provisions contained in the next following section, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held

The Judge of the principal Court of original civil jurisdiction at such place shall be the judge of such Matrimonial Court, and in the trial of cases under this Act, he shall be aided by seven delegates

Delegate —A delegate under this Act is in a similar position to a Judge and cannot be challenged in appeal 43 Ind Cas 71

18 The Local Government may from time to time alter the local limits of the jurisdiction of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its government

Power to alter territorial jurisdiction of District Courts

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* Act XLV of 1860

Certain Districts within jurisdiction of Chief Matrimonial Court

19 Any district which the Local Government, on account of the fewness of the Parsi inhabitants shall deem it inexpedient to include within the jurisdiction of any district Matrimonial Court shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such Local Government where there is such Court

Court seal

20 A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge

Appointment of delegates

21 The Local Governments shall in the Presidency towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the ... under this Act ... be Parsis their names shall be published ... number shall within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits not more than twenty

Power to appoint new delegates

22 The appointment of a delegate shall be for life

But whenever a delegate shall die or be desirous of relinquishing his office, or refuse or become incapable or unfit to act or be convicted of an offence under the Indian Penal Code or other law for the time being in force, then and so often the Local Government may appoint any other person being a Parsi to be a delegate in his stead and the name of the person so appointed shall be published in the Official Gazette

Delegates deemed public servants

23 All delegates appointed under this Act shall be considered to be public servants within the meaning of the *Indian Penal Code*

Selection of delegates under sections 16 and 17 from those appointed under section 21

24 The delegates selected under section 16 and 17 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under section 21

Practitioners in Matrimonial Courts

25 All advocates vakils and attorneys at law entitled to practise in a High Court shall be entitled to practise in any of the Courts constituted under this Act and all vakils entitled to practise in a District Court shall be entitled to practise in any District Matrimonial Court constituted under this Act

Courts in which suits to be brought

26 All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit

When defendant has left British India

When the defendant shall at such time have left British India such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together

IV—Of Matrimonial Suits

(a) *For a Decree of Nullity*

In case of lunacy or mental unsoundness

27. If a Parsi at the time of his or her marriage was a lunatic or of habitually unsound mind such marriage may, at the instance of his or her wife or husband be declared null and void upon proof that the lunacy

12 Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the Indian Penal Code,* and shall be liable on conviction thereof, to the penalties provided in section 466 of the said Code

Penalty for making, &c, *false certificate*

13 Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both

Penalty for not registering certificate

14 Any person secreting destroying or dishonestly or fraudulently altering the said register in any part thereof shall be punished with imprisonment of either description as defined in the Indian Penal Code* for a term which may extend to two years, or, if he be a Registrar for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees

Penalty for secreting, destroying or altering register

III—Of Parsi Matrimonial Courts

15 For the purposes of hearing suits under this Act, a special Court' shall be constituted in each of the presidency towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit

Constitution of special Courts under Act

16 The Court so constituted in each of the presidency towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be

Parsi Chief Matrimonial Courts

The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court

The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act he shall be aided by eleven delegates

17 Every Court so constituted at a place other than a presidency town shall be entitled the Parsi District Matrimonial Court of such place

Parsi District Matrimonial Court

Subject to the provisions contained in the next following section, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held

The Judge of the principal Court of original civil jurisdiction at such place shall be the judge of such Matrimonial Court, and in the trial of cases under this Act, he shall be aided by seven delegates

Delegate—A delegate under this Act is in a similar position to a Judge and cannot be challenged in appeal 43 Ind Cas 71

18 The Local Government may from time to time alter the local limits of the jurisdiction of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its government

Power to alter territorial jurisdiction of District Courts

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* Act XLV of 1860

then and in such case ... hereby limited for appealing against any decree dissolving a marriage shall have expired and no appeal shall have been presented against such decree or ... e been dismissed, or ... al any marriage shall be declared to be ... parties thereto to marry again, as if the ... th

Adultery of petitioner ... ection in which the Court c

Costs of wife —The ... n and Island of Bombay ... d herself at his cost ... uccessful or not

of the Parties

In any suit und ... taining a judicial separation or a ... pendente lite ... v of marriage, or for dissolving ... Court, ... Court may from time to time ... orders, and make such provi ... proper, with respect to the ... under the age of sixteen ... ch suit, ... —inclu ... decree ... tition for this purpose, such orders and pro

34 The Court may, if it s al ... istody maintenance

Permanent alimony

judicial separat ... en as might have to the satisfaction o ... case the suit for wife such gross sum, or such monthly or periodic ... l pay ... ee of divorce ... wn property ... of the wife, ... be deemed ... Court that ... executed ... either in have been duly executed ... ll think ... efit of

In case any such order shall not be obeyed by her husband he shall be liable to damages at her suit and further to be sued by any person supplying her with necessaries, during the time of such disobedience for the price or value of such necessaries

Court —The High Court in its original s de has no ... a Parsi husband and a Parsi wife to make an ord ... panied by any order for judicial separation which ... Parsi Chief Matrimonial Court at Bombay 38 B ... R 211 ... of the As to what question should be referred to the jury *Vide* 1894 P J 109

35 In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself or to any trustee on her behalf ... nay impose any terms or ... may from time to time a ... to the Court expedient so to do

Payment of alimony to wife or her trustee

Notes —Where the wife is granted permanent alimony and the husband's estate is charged with such alimony she is entitled at the death of her husband to receive permanent alimony out of the state of the deceased and also to her distributive share out of the remaining estate of the deceased 24 B 465

(d) *For Restitution of Conjugal Rights.*

36 Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife or where a wife shall have deserted or without lawful cause ceased to cohabit with, her husband the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should

Suit for restitution of conjugal rights

not be granted, may proceed to decree such restitution of conjugal rights accordingly

If such decree shall not be obeyed by the party against whom it is passed he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees or with both

Notes—Previous contract may be a bar 23 B 279 How the decree is enforceable *Vide* 9 B H C R 290

No suit to enforce marriage or contract arising out of marriage when husband under 16 or wife under 14 years

37 Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Parsis or any contract connected with or arising out of any such marriage, if at the date of the institution of the suit the husband shall not have completed the age of sixteen years or the wife shall not have completed the age of fourteen years

Suits with closed doors

38 In every suit preferred under this Act the case shall be tried with closed doors should such be the wish of either of the parties

Absence of delegates during trial

39 * ' Notwithstanding anything contained in section 16 or section 17 where in the case of a trial in a Parsi Chief Matrimonial Court not less than nine or, in the case of a trial in a Parsi District Matrimonial Court not less than six delegates have attended throughout the proceedings the trial shall not be invalid by reason of the absence during any part thereof of the other delegate or delegates

Where at any stage of a trial in a Parsi Chief Matrimonial Court less than nine or in a Parsi District Matrimonial Court less than six delegates are present who have attended throughout the proceedings and the presiding Judge is of opinion that it is not possible without undue delay to secure the attendance throughout the procedding of nine or six delegates as the case may be the proceedings shall b stayed and a new trial shall be held with the aid of fresh delegates

Civil procedure Code applied

40 The provisions of the Code of Civil Procedure† shall so far as the same may be applicable, apply to suits instituted under this Act

Determination of questions of law procedure and fact

41 In suits under this Act all questions of law and procedure shall be determined by the presiding Judge, but the decision on the facts shall be the decision of the majority of the delegates ' who have attended throughout the trial ‡

Provided that where such delegates are equally divided in opinion the decision on the facts shall by the decision of the Presiding Judge ‡

Appeal to High Court

42 An appeal shall lie to the High Court from the decision of any Court established under this Act whether a Chief Matrimonial Court or a District Matrimonial Court on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits and on no other ground

Provided that such appeal be instituted within three calender months after the decision appealed from shall have been pronounced

* Section 39 and the words within quotations have been inserted by Act 20 of 1922

† See Act V of 1908 s 157

‡ Substituted by Act XX of 1922

Liberty to parties to marry again

43 When the time hereby limited for appealing against any decree dissolving a marriage shall have expired and no appeal shall have been presented against such decree or

when any such appeal shall have been dismissed, or

when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner

it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death

V—*Of the Children of the Parties*

Custody of children *pendente lite*

44 In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage, or for dissolving a marriage the Court may from time to time pass such interim orders, and make such provision in the final decree as it may deem just and proper with respect to the custody, maintenance and education of the children under the age of sixteen years the marriage of whose parents is the subject of such suit,

Orders as to custody of children after final decree

and may, after the final decree upon application by petition for this purpose, make from time time all such orders and provisions with respect to the custody maintenance and education of such children as might have been made by such final decree or by interim orders in case the suit for obtaining such decree were still pending

Settlement of wife's property for benefit of children

45 In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion the Court may order such settlement as it shall think reasonable to be made of such property or any part thereof for the benefit of the children of the marriage or any of them

VI—*Of the Mode of enforcing Penalties under this Act*

Cognizance of offences under Act

46 All offences under this Act may be tried by any officer exercising the powers of a Magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer the offender shall be committed for trial before the Court of Session

P n shment of off nces nder

47 If any offence which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six

... ly person within

original civil

such offence

of Police* of

the place at which such Court is held

Levy of fines by distress

48 All fines imposed under the authority of this Act may in case of non payment thereof be levied by distress and sal of the offender's movable property by warran under the hand of the officer imposing the fine

Pro e l re unt l return made to dis ress wa rant

49 In case any such fine shall not be forthwith paid such officer maj order the offender to be arrested and kept ir safe custody until the return can be convenientl made to such warrant of distress unless the

* See Act V of 1898, s 3

offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

50 If upon the return of the warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or

Imprisonment if no sufficient distress

in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient movable property whereupon such fine could be levied if a warrant of distress were issued,

any such officer may by warrant under his hand, commit the offender to prison, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine

VII—Miscellaneous

51 Subject to the provisions contained or referred to in this Act, the Hight Court shall make such rules and regulations concerning the practice and procedure of the Parsi Chief and District Matrimonial Courts in the Presidency or Government in which such High Court shall be established as it may from time to time consider expedient and shall have full power from time to time to revoke or alter the same

Rules of procedure of Parsi Matrimonial Courts to be made by High Court

All such rules, revocations and alterations shall be published in the official Gazette

52 The Governor General of India in Council may invest the chief executive officer of any part of British India under the immediate administration of the Government of India with the powers vested by this Act in a Local Government

Power to invest chief executive officer with powers of Local Government

53. [*Commencement and extent of Act*]—*Repealed by Act XII of 1876.*

SCHEDULE.

(*See Section 6*)

Date and place of marriage	Names of the husband and wife	Condition at the time of marriage	Rank or profession	Age	Residence	Names of the fathers or guardians	Rank or profession	Signature of the officiating Priest	Signature of the contracting parties *	Signature of fathers or guardians of contracting parties under twenty-one years of age *	Signature of the witnesses *

* The last three columns have been substituted by Act VIII of 1930

THE PARTITION ACT, 1893.

ACT NO. IV OF 1893

RECEIVED THE G G 's ASSENT ON THE 9TH MARCH, 1893.

An Act to amend the Law relating to Partition.

WHEREAS it is expedient to amend the law relating to partition, It is hereby enacted as follows —

Title, extent, commencement and saving

1 (1) This Act may be called the Partition Act, 1893,

(2) It extends to the whole of British India,*

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immovable property paying revenue to Government.

Notes —This bill was introduced by *Sir Rash Behary Ghosh* In introducing the bill he observed 'In this country where co parcenary is one of the commonest modes of holding property the proper method of effecting a partition must always be a question of considerable importance ' Apart from the Act, the Court has an inherent power to refuse to divide the property by metes and bounds and to adopt such other means as may appear [illegible]
L W 730=61 M L J
the Act exclude the
subject of partition at

2 Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property, and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards direct a sale of the property and a distribution of the proceeds

Power to Court to order sale instead of division in partition suits

Notes [illegible]

parties that it should be sold (3) that at least one half of the shareholders must concur in the sale But in order to prevent the possibility of a request for sale being made on inadequate grounds or from proper motives, provision is made for the compulsory transfer of their shares by the parties who desire to sell to the other
even when all the condi
which I trust will never
of the Partition Act applies
where the suit is brought by the sharer against the transferee 23 B 77 This section which gives the Court power to order sale instead of division in partition suits [illegible]

* Sub-section (3) after this repealed by Act 10 of 1914 has been omitted

exercise of powers undor this section 5 C W N 123; 24 M 639; 32 B 103 The

14 ... tion of the under ground mine and the minerals the power to order a sale under this section may be exercised 20 C W N 1306=11 Pat L J 447 The provisions of this Act will apply where a preliminary decree for partition has been made, but when the final partition had not been effected 12 M L T 337=(1912) M W N 943, see also 71 Ind Cas 903 If any party to a decree for partition finds i inconvenient in actual practice it is open to him to apply under this section 20 A L J 90=L R 3 A 93-64 Ind Cas 948=1922 All 185 see also 64 Ind Cas 949 An action under this section can be taken not only when the property is wholly impartible but also when a partition cannot conveniently be made 69 Ind Cas 196 The principle underlying this section is that a partition ought not to be made if by partition the intrinsic value of the property to be partitioned would be destroyed 103 Ind Cas 367=A I R 1927 All 686 The sale which a Court directing partition can make under the Partition Act can only be that of a complete share and not a portion thereof 91 Ind Cas 1009-A I R 1926 Oudh 230 Provisions of the

among co sharers may be given the property, is not a request under s 2 and so the Partition Act does not apply A I. R 1929 All 443=116 Ind Cas 851

Procedure when sharer undertakes to buy

3 (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertai ed and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub section (1) the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicants shall be liable to pay all costs of or incident to the application or applications

Notes—Under this section the person at whose instance an order for sale of property sought to be partitioned is made is not entitled to apply for leave to purchase the share or shares of the other party or parties entitled to partition Under this section also the Court is not competent to order the whole of the property in question to be sold at a valuation but only the share or shares of the applicant or applicants for sale A W N 1895 231; 7 S L R 117=24 Ind Cas 273 The Court has acted in accordance with ss 2 and 3 when the parties are not at issue on the point that a division cannot be reasonably or conveniently made 16 A L J 584=47 Ind Cas 905 The provision of the Partition Act apply to the stage at which the suit is in the Court of first instance The various provisions of the Act manifestly indicate that, if any action can be taken under the Act, it can only be taken in the Court of first instance before a decree for partition has been actually made After a decree for partition has been made, after one of the co sharers in the property has remained quiescent in both the Courts below, he could not be allowed to ask the final Court of Appeal to do for him what the Court might have done if he had moved the Court when the case was under trial 71 Ind Cas 983=1923 All 293 In a partition suit the defendants, who owned more than half share in a house, invited the Court to sell the house The request of the defendant was followed by a similar request by the plaintiffs who wanted to purchase the house *Held*, that

the Court was bound to follow the procedure enjoined by s 3 (2) 103 Ind Cas 367 (2)=A I R 1927 All 686 The pro...
the Court makes an order under sectior
one of the parties that the properties sh
oc urring in the latter part of s 3
applied for leave to buy 48 M 920=.
1925 Mad 1235=40 M L J 481 As
516=A. I R 1925 Mad 1234 Section 3 comes into play only when a sale has been applied for under s 2 by a shareholder or shareholders interested to the extent of at least one-half of the property It is at that stage and before the sale is actually ordered that the right to apply for leave to buy at a valuation can be exercised under s 3 But that can be done only by a shareholder other than the larger shareholder ... the smaller
3 have been
this section
he applicant
and share
M W, N,
1040

Section 3 (2) directing that the whole property might be put in auction would apply only when there are more that two co sharers 97 Ind Cas 690=44 C L J, 47=A I R 1926 Cal 1190

4 (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family, being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf

Partition suit by transferee of share in dwelling-house

(2) If in any case described in sub section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub section (2) of the last fore going section

Notes —This section relates only to cases where the transferee sues for partition In cases where this section is applicable it is the duty of the Judge to make a valuation of the share of the transferee and direct its sale to the sharer of the dwelling house 23 B 77, 23 Bom L R 1083, 73 Ind Cas 748 An application under this section can be made at any stage of a suit even in the appellate Court 116 Ind Cas 161=49 C L J 136, 45 Ind Cas 604, 90 Ind Cas 12 This section applies only to cases where at the time of sale to the stranger the dwelling house belongs to an undivided family 23 B 73 Whether this section applies or not to a case, it is a well known principle of equity which must be adopted in all partition cases, that is, when it is inconvenient to divide a property that property must be left in the possession of the person in occupation, and the other person ...
15 C W N 555 It should be
price above the valuation mad-
are not excluded from the benefit of section 4 of the Act A W N 1908, 120=5 A L J 352=4 M L T 38=30 A. 324, 58 C L J 174=38 C W N 46 The words ...

inclined to do 9 O C 156, see also 97 Ind Cas 416, 126 Ind Cas 593, 119 Ind Cas 523 The operation of this section cannot be avoided, if the property comprised in the suit includes, in addition to the dwelling house other lands owned by the parties 7 Ind Cas 436=12 C L J 525 In a suit by stranger for partition of house, the Court has to find whether the house is dwelling house belonging to undivided family and if any member undertakes to buy his share must value the house in a manner that it thinks fit 123 Ind Cas 336=A I R 1930 All 384 This section will apply even to a

house a portion of which is already separated owing to one member selling his interest in it 119 Ind Cas 523 An application under this section may be made after the preliminary decree 12 C L J 525, see also 10 C L J 503, 5 C W N 128, 24 M 659, 21 A 409, 32 B 103, 10 Bom L R 23, (1922) Cal 129 The word family as used in this section Includes a group of persons related in blood who live in one house under one head or management It is sufficient if the members of the family are undivided *qua* the dwelling house which they own The object of the section is to prevent a transferee of a member of a family who is an outsider from forcing this way into a dwelling house in which other members of his transferer's family have a right to live A. I R 1928 Cal 539=109 Ind Cas 67 The term 'house embraces not merely the structure or building but includes also adjacent buildings etc,

nt occupation of the house It includes the

e words

lwelling

5 A L

W R

o C L J 407, 9 S L R 84 The expres

ndivided family' as used in this section is not applicable to a house belonging to a Muhammadan family A W N 1097 52=4 A L J 209=29 A 308 It is open to Court which has fixed a time within which

which is to be partitioned is to be paid 1 A.

e" mean something more than a mere offer to

conditional offer from which the person making

n such undertaking being given the Court is

41 Ind Cas 867 The word 'Court includes

5 C. 873=45 Ind Cas 604 The operation of

found that a stranger transferee is entitled to partition In fact no order can be passed under the Partition Act before such a

n 4 applies to a case of

R 193 Mad 15 Section

an undivided family, (2)

the stranger transferee

1931 M W N 1040, 119 Ind. Cas 523 90 Ind Cas 121, 1932 A L J 809=A I R 1932 All 678=141 Ind Cas 118, 38 C W N 46 Surrender by a tenant is not a transfer 37 C W N 119

5. In any suit for partition a request for sale may be made or an undertaking or application for leave, to buy may be given or made on behalf of any party under dis

Representation of parties under disability

act on behalf of such party in such suit, but comply with any such request, undertaking o nion that the sale or purchase will be for the disability

Notes—On such an application being made to the Court, the Court must exercise a judicial discretion as to the property in the interest of the minor of the proposed sale or purchase *Vide* 17 A 531, 28 A 585=33 I A 128, 17 A 531, 29 M 101, 10 B H C R 311

6 (1) Every sale under section (2) shall be subject to a reserved bidding and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time

Reserved bidding and bidding by shareholders

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non payment of deposit or as to setting off or accounting for the purchase money or any part thereof instead of paying the same as to the Court may seem reasonable

(3) If two or more persons of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder

Notes s 2 and s 3 does not apply it is neverth

15 When the trial Court allows a sale

ppellate order is a decree and is appeal

requirements of the Civil Procedure Code s 100 are fulfilled

116 Ind Cas 161 Where the property is incapable of partition, the Court should direct the sale to be held among the parties and the property should be given to that party who offers the highest price above [illegible] 1930 Cal 616 As defendants are entitled to pr[illegible] the provisions of s 7 just as on the execution [illegible] the decision on such objection 118 Ind Cas [illegible] should fix reserved bidding A I R 1933 Sind 40=140 Ind Cas 461

7 Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely :—

Procedure to be followed in case of sales

(a) if the property be sold under a decree or order of the High Court of Calcutta Madras or Bombay in the exercise of its original jurisdiction, or of the Court of the Recorder of Rangoon, the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar ,

(b) if the property be sold under a decree or order of any other Court, such procedure as the High Court may from time to time by rules prescribe in this behalf and until such rules are made, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees

Notes —*Vide* 13 L W 429=62 Ind Cas 730

8 Any order for sale made by the Court under sections 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the Code of Civil Procedure

Orders for sale to be deemed decrees

9 In any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act

Saving of power to order partly partition and partly sale

Notes —If in a suit for partition there are two parcels of land one capable of partition and the other not so capable the Court can order the sale of the latter But the order directing the sale of one of the allotments obtained after partition is not within section 2 or section 9 of the Act 36 C L J 917 , 49 C 1043=10 Ind Cas 687=1923 Cal 221 •

10 This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court

Application of Act to pending suits

Notes —This section provides that this Act applies to suits instituted before the commencement of the Act in which no scheme for partition of the property has been finally approved by the Court 21 A 400

THE INDIAN PARTNERSHIP ACT, 1932.

ACT NO· IX OF 1932

CONTENTS

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RELATIONS OF PARTNER TO ONE ANOTHER

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CHAPTER V

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THE INDIAN PARTNERSHIP ACT, 1932

ACT NO IX OF 1932

An Act to define and amend the law relating to Partnership

WHEREAS it is expedient to define and amend the law relating to partnership, It is hereby enacted as follows :—

Codyfying Act, construction of—In *Vaglıono* v *Bank of England*, 60 L J B 145=(1891) A C 10: at p 107, *Lord Halsbury L C* said 'I am wholly

odify the law, you existence of that rd *Herschell* also ne the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiry how the law previously stood and then assuming that it was probably intended leave it unaltered to see if the words of the enactment will bear an interpretation in conformity with the view' See also *Ganpat* v *Sopana* 30 Bom L R 1 The

law is that on any point specifically in the codified enactment, and as In interpreting a statute the proper course is in the first instance, to examine the language of the statute and to ask what is its natural meaning uninfluenced by any consideration derived from the previous state of the law and not to start with enquiring how the law previously stood, and

unaltered to see if the words with the view *Narendra* ını, 14 A 145, *Empress* v *d*, 29 C 707 (P C)=29 I A

Construction of Consolidating Act—In construing an Act of Parliament to amend or alter the provisions t ought to be given to its provisions substituted *Michell* v *Simpson*,

25 Q B D 183.

Report of the Special Committee—"3 In paragraph 8 of the Report of the Special Committee on the Sale of Goods Bill which was adopted as the

was found more convenient to have separate enactments for the several branches of the law of contract, *e g*, the Transfer of Property Act, the Negotiable Instruments Act and the Merchant Shipping Act In our opinion in view of the complexity of modern conditions the time has now come when the process should be accelerated by embodying the different branches of law relating to contract in separate self contained enactments, and we hope that the Bill which we attach to our Report may be passed into law at an early date and may be but the first of the series required to complete the task which we have outlined above

... and of the series foreshadowed by the Special Com-
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Government of the country so expressed ... understood both
by English and Indian Government servants
law libraries.' With that object in view

the position is much the same as that in regard to the Sale of Goods and the remarks of the Special Committee on the Sale of Goods Bill in paragraph 6 of their Report may be repeated with cogency.

"Whatever merit the simple and elementary rules embodied in the Indian Contract Act may have had and however sufficient and suitable they may have been for the needs which they were intended to meet in 1872, the passage of time has revealed defects the removal of which has become necessary in order to keep the law abreast of the developments of modern business relations.

"... The Special Committee ... Sale of Goods Bill ...

"5. The English Partnersh...
contrast to the Sale of Goods
nearly all the British Dominions
Partnership Act which is in forc
a comparison with the Sale of
provisions are closely followed
advantages Sir Courtenay Ilbert has remarked:

"Experience shows that whenever Parliament passes a good ... framed

tive Legislation)

"The Partnership Act, 1890 ...
and
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Partr
ously undigested except by private authors, into a series of propositions authoritatively expressed

"6. The Partnership Act, 1890, however, has not been such a successful piece of codification as the English Sale of Goods Act 1893 and ...

... branches
doubt an inc
a work is not
boon; and
a mass of law, previously undigested except by private authors into a series of propositions authoritatively expressed and as carefully considered as any Act of Parliament is likely to be.

"The learned author of the treatise proceeds to discuss the difficulty of passing a considered code of law on a technical subject through a democratic Legislature like Parliament and he concludes ,

"Taken as a whole [illegible]
the requirements of the I[illegible]
ritative revision , and ar[illegible]
this point of view the [illegible]
useful, although it is by [illegible]
might have made it

"These remarks have encouraged us to depart from the precedent of the Sale of Goods Bill, where the English Act was modified in a few particulars only and to use the Partnership Act, 1890, with some degree of freedom. Nevertheless, the Bill does not alter in any substantial way the English law of partnership or the Indian law of partnership which is based thereon The main principles are the same, and likewise all important details. The deviations in principle it does show are on minor points, and have been introduced in order to adapt the law to Indian conditions or to sup[illegible] he views of authorit[illegible] nciples in the Pa[illegible] nge in the wordin[illegible] nglish decisions [illegible] actical identity in substance of the two Acts and the similarity in wording of important provisions will avoid this undesirable result and will attract to difficult cases in India [illegible]

"One feature pec[illegible] from the laws of other [illegible] which the firm as d[illegible] as the debtor or [illegible] purposes of book-keeping, and in order to arrive at the net balance to be paid to or by each of the [illegible]

which subsists between persons carrying on a business in common with a view to [illegible]

"firm' or "relating to a firm'. The use of the defined word "firm' seems almost to be avoided The Bill confines the word "partnership" to its legitimate defined meaning of the relation which exists between partners and wherever the partners themselves are referred to collectively it uses the word "firm' Hence the word firm" occurs very frequently in the Bill, whereas the word 'partnership" occurs rarely and thereby the Bill, as compared with the English Act, emphasises the concrete thing, the firm, as against the abstract relation of the partnership

[illegible] a matter of arrangement. [illegible] n the abstract relation of [illegible] comprising a partnership [illegible] This, however, is not the practical or commercial view of a firm, whereunder a firm has a sufficient degree of personality and of continuity to justify such commonplaces as advertisements which

claim that a firm has been established for over a century Even the English Law as expressed in the Partnership Act 1890, has been forced to depart from the strict legal view of the firm for its speaks of changes in a firm, or persons dealing with a firm after a change in its constitution of debt due from the firm to a partner and uses other phrases concealing some degree of personality to the firm and of con tinuity in its existence inspite of internal changes The Bill goes in this direction to the limits which are already implied in the English Act, and it collects together in the separate chapter entitled 'Incoming and Outgoing Partners all provisions which direcly bear upon the introduction retirement expulsion insolvency and death of partners in those cases where the business of the firm is carried on without a dissolution of partnersh p The result is that apart from the preliminary chapter and the chapter on "The nature of partnership, the Bill has three chapters which deal with the worl ing firm, namely —

Chapter III —Relations of partners to one another,
'Chapter IV —Relations of partners to third parties,
'Chapter V —Incoming and Outgoing Partners,
and one chapter relating to the extinction of a firm namely,—
'*Chapter VI —Dissolution of a firm*

'10 We hope that this re arrangement of the Partnership Act, 1890, will be of *practical convenience to lawyers and business men in that very numerous class of* cases where there is a change in the constitution of a firm without a dissolution The new chapter V conta ns a number of concise propositions setting out the legal consequences flowing from changes in the personnel of a firm when there is no dissolution which are embodied in various sections of the English Act scattered throughout all three of its parts The re arrangement has also the advantage of confining chapter VI strictly to provisions relating to the dissolution of a firm and its legal consequences But we must emphasise again that in so re arranging the English Act, we have not departed from any of its outstanding conceptions or principles

'11 One of us would prefer to go much further and would propose that, or the whole of Chapter II and clauses (*a*) and (*b*) of clause 2, the following should be substituted —

"4 (1) A firm' is an association of persons who have jo ned together for the purpose of conducting some kind of lawful trade, profession, calling or enterprise as a business venture, with the object of obta ning profit by dealing *with third parties* each of the members of the association being in the position of a principal in all such dealings

(2) The members of a firm are called 'partners'; their mutual relationship is called 'partnership, the name under which the business is carried on is called the 'firm name, and an act of the firm is an act or omission in which all the partners are deemed to take part

"5 Every firm shall be deemed to be constituted by a contract between the partners whereby they agree that their partnership shall be governed by the Articles of Partnership stated in the schedule

'*Provided that the partner may, at any time, expressly or impliedly,* agree to terms of partnership to the contrary of or in addition to such Articles

According to this scheme the Articles of Partnership in the Schedule would ... ɔ such of the mutual rights and duties ... the partners This *scheme would* ... d portions of chapters IV, V and VI ... ɔnsider that this scheme would be too ... the whole of the law set out and

... t ... s ... y

Chamber of Commerce first made the ... taken for the compulsory registration ... practicable but eversince at frequent ... supported by Local Governments, ha ... s

interests of the trading public The movement was strengthened by the passing of the Registration of Business Names Act 1916 (5 & 6 George V c 58) which furnished a useful precedent This Act *inter alia* makes the registration of all firms compulsory attaches a penalty to failure to register, and renders persons *who are in*

default incapable of bringing a suit to enforce their claims as partners, whether against their co partners or against third parties In 1918 the Industrial Commission recommended a system of compulsory registration and in 1925 the Civil Justice Committee made specific recommendations somewhat on the lines of the Registration of Business Names Act, 1916 but excepting firms with a capital below Rs 500 In 1920 the legislature of Burma passed the Burma Registration of Business Names Act, 1920 which applied the principle of compulsory registration to certain towns in Burma

"13 All the proposals made at various times were considered by the Government of India, but owing either to lack of unanimity among the proposers or to difficulties in the proposals themselves, no conclusions were come to which could form the basis of a Bill which held any promise of a successful passage through the Indian legislature These difficulties related to—

(1) Hindu undivided families,
(2) short lived partnerships, and
(3) firms in a small way of business,

and a short discussion of these will disclose the reasons why nothing so far has been done, and will help to explain the present proposals.

"14 A Hindu undivided family may carry on a family business exclusively for its own benefit or it may carry on a business with one or more outsiders as partners [illegible] such a family should have his [illegible] been deemed to be an impracti- [illegible] be registered and every death or [illegible] register It has been recognised [illegible] community and probably would [illegible] voided, as was pointed out by the [illegible] lustrial Commission in 1918 A [illegible] ss may have many of the charac- [illegible] arises only from contract and [illegible] he law of partnership has no [illegible]

but there are questions of fact mainly, or, where they are mixed questions of fact and law, the law is not that of partnership but is the Hindu law. If the partner member does represent the family and if his share of the profits of the firm goes into the family stock then the whole of the joint family property will be liable for the debts of the firm But if the partner member is trading on his own responsibility and keeps the profits to himself then the creditors of the firm cannot realise their claims against the firm from the joint family property beyond the extent of the interest of the partner member It will be seen that the principles of law involved are principles of the Hindu law, and that they are the same principles which are applied to all dealings by the manager or representative of the joint family

"15 No attempt to smooth the path of litigation against a Hindu undivided family has been made, for example in the recent Transfer of Property (Amendment) Act 1929, or Sale of Goods Act, 1930, though the difficulties exist on a much greater scale in connection with mortgages and sales by Hindu families generally than in connection with the restricted class of the mercantile transactions of Hindu trading families It is submitted that the attempt need not be made now, for the limited purpose of partnership to the prejudice of the passing of an otherwise useful measure

"16 The difficulties connected with shortlived partnerships and with firms in a small way of business may be considered together It has been pointed out repeatedly with much force that to require small or ephemeral joint ventures to be registered would produce little public benefit and would act as a clog on petty enterprise, and such ventures are so numer [illegible]
tion would be counterbalanced [illegible]
proposals, like that of the Civil [illegible]
capital should be exempt or th [illegible]

but none of these proposals have be an elusive quantity and it is the valuation of a suit in order to determine whether the suit lies or not is likely to lead to improper devices and to perjury The Bill seeks to overcome this class of difficulty by making registration optional, and by creating inducements to register which will only bear upon firms

registered or unregistered, may sue for dissolution of the firm This exception is

regarding the constitution of the firm will be conclusive proof of the facts therein contained against the partners making them, and no partner whose name is on the register will be permitted to deny that he is a partner—with certain natural and proper exception which will be indicated later This should afford a strong protection to persons dealing with firms against false denials of partnership and the evasion of liability by the substantial members of a firm

"19 The framing of inducements to register changes in a firm has been difficult, but the devices proposed in the Bill are put forward as being as strong as may be altering any of the established ewly introduced into the firm, unable to claim his dues from faith or sue for dissolution! firm and knows that a new r a condi the other new but ng of the l will not

"20 As regards outgoing partners the Bill provides that the estate of a deceased partner or of an insolvent partner is in no case liable for the acts of the firm after his death or insolvency This rule is well established and is hard and fast Nothing in the way of registration of the death or insolvency of a partner, therefore, can improve the position of third parties and no inducement need be offered beyond the desire register up to date for the re the exceptions mentioned not establish the partner

red or expelled partners who are legall

register Hence, when a partner retires or is expelled, it will be in his own interest and also in the interest of the remaining partners to give immediate notice of the change to the Registrar

"22 [illegible] still be [illegible] before it [illegible] of all th[illegible] notice to the Registrar

"2[illegible] [illegible]

the rest of the Bill, so that firms may apply for registration at once The clause regarding the conclusive nature of the statements recorded in the register will come [illegible]

head "Goodwill'.

[illegible]

The Act does no make any express provision for disposing of the goodwill on the dissolution of a firm Probably this is due to the consideration that the rules of law relating to goodwill are not confined to cases where a business has been carried on in partnership and therefore do not belong to the law of partnership in any exact sense Nevertheless the [illegible] cases and the question [illegible] dered and provided for [illegible] considered on its dissolut[illegible] [illegible] general provisions could find a logical place but it is hoped that the provisions now proposed for the goodwill of firms will be found to contain principles which may be used as a general guide'.

CHAPTER I

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Indian Partnership Act, 1932

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

(3) It shall come into force on the 1st day of October, 1932, except section 69, which shall come into force on the 1st day of October, 1933

Sub clause (3) —"As regards sub clause (3) it has already been noticed in paragraph 24 of our Report that clause 68 of the Bill (=section 69) is not to come in force until one year after the rest of the Bill in order to give firms a reasonable chance to register before that clause begins to operate against them" *Statement of Objects and Reasons*

We propose that the Act generally should come into force on 1st October, 1932, and section 68 a year later This arrangement should provide ample opportunity to the public to become acquainted with the new law, specially with the chapter on Registration, and to Government to make arrangements for giving effect to that chapter —*Report of the Select Committee*

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(*a*) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm,

(*b*)

(*c*)

(*d*) means any person who is not a partner in the firm, and

(*e*) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872,* shall have the meanings assigned to them in that Act

Object of the section —The definitions of act of a firm' and of "third party are included to economise words throughout the Bill. The definition of business" is taken from the Partnership Act, 1890

Business—This definition is taken from the English Partnership Act, 1890 (53 & 54 Vict c 39) s 45 To constitute Partnership, the existence of a business is essential "To constitute a partnership the parties must have agreed to carry on business or to share profits in some way in common" *Mollow* v *Court of Wards*, (1872) L R 4 P C 419 In some professions however, etiquette makes partnership impracticable for example, that of an English barrister *Halsbury* Vol 22 P 4 Meaning of the word business is discussed in 32 P L R 235=A I R 1931 Lah 390

Application of provisions of Act IX of 1872

3 The unrepealed provisions of the Indian Contract Act, 1872,* save in so far as they are inconsistent with the express provisions of this Act shall continue to apply to firms

Notes —"Like clause 3 of the Sale of Goods Bill, this will make the Indian Partnership Act a branch of the general law of contract Sub clause (f) of clause 2 has the same object" *Notes on Clauses*

CHAPTER II

THE NATURE OF PARTNERSHIP

Definition of 'partnership 'partner', firm" and 'firm name'

4 "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm," and the name under which their business is carried on is called the "firm name"

Object of the Section —Th

of the term which has been carried into the English Act The definition given by the

* IX of 1872

Indian Contract Act and by Pollock regard "partnership" as a relation between persons ; the New York Civil Code speaks of it as an association between two or more persons for a certain purpose ; Kent, Story and Watson see it as a contract between persons ; Dixon regards it as a group of persons between whom a certain relation exists ; and Rutherford's view may be any or all of the others For a proposed scheme of statutory contract law of which the present Bill is to form a part to be administered by Courts of all grades of experience, it is most desirable to have this confusion removed and to give to "firm and 'partnership' meanings which will be distinct from each other, and can be consistently used throughout the statute Unfortunately the confusion has already gone so far that this difficulty cannot be entirely avoided for the word 'partnership' which ought to have been restricted to its obvious meaning of a relationship, is both in legal writings and in popular usage, employed sometimes to denote a group of persons This difficulty, it is submitted should be faced and the

... the Bill, therefore, the word
... and in no other Where
... invariably used
... ract Act, section 239, was
... provement upon the present

Indian definition in order to meet the criticisms of Jessel M R in *Pooley* v *Driver*, (5 Ch D 472) who points out that certain elements in Kent's definition are subsidiary

... hat of Pollock with
... s as being 'carried
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... The difference lies
... " The intention is
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for all

There must be an agreement entered into by all the persons concerned — 'It is a contract of some kind undoubtedly — a contract like all contracts involving mutual consent of the parties , and it is undoubtedly a contract

... —that is, a business bringing
... between the partners That
... or not has been a question

of proof of agency or concensus 51 A 827 = 118 Ind Cas 145 = 167 Ind Cas 221 ,

43 Ind Cas 9 Person can become partner only by his own consent and that of the other members 118 Ind Cas 141 A party must have an intention to become a ... without such ... s Ltd v Gavi ... N. 34 The ... between the ... (1884) 27 Ch D 460 C A A minor cannot be a member of a firm 26 C W. N. 954 P. C ; A I R 1927 Sind 18

A contract of partnership between a manager of joint family on its behalf and a ... family partners within the meaning ... rietor of a firm dies, his heirs only ... unless they agree expressly or ... agreement can be inferred from ... 1926 All 161 Divided members ... 63 Ind Cas 548

The agreement must be to share the profits of a business—The sharing of losses is regarded as consequential upon the sharing of profits So an agreement to share profits and losses in a ... *Green* v *Beeseley*, 2 Bing N C 108 ; *Brett* v *Bee* ... on *Partnership*, 6th Ed p 48 ; *Waugh* v *Carrer*, ... authorities clearly show that 'two people merely ... partnership between them, even as against ... S 556 ; see also *Burnard* v *Aaron*, 31 L. J ... so also receipt ... v *Hickman*, ... *Armstrong*, ... to share profi ... tion of the parties as expressed in the agreement might be, that of necessity imposed upon than the position of partners is no longer considered as good law. *Vide Walker* v *Hirsth*, 57 Ch D 460 (C A) ; *Badley* v *Consolidated Bank* (1888) 38 Ch D 238, 258 (C A 5) An agreement to share the trees cut in a forest does not constitute a partnership A I R 1927 Lah 333=100 Ind Cas ...

1930 Nag ... An agreement to share loss is not a necessary ingredient of partnership 118 Ind Cas 145 Partnership ...

Ind Cas 153 But a loan to business man with agreement to receive interest and a share in profits does not of itself constitute the lender a partner 101 Ind Cas 93 Gumastha sharing in profits and losses is a partner 44 Ind Cas 283 Where in a partnership three were to contribute capital the other person who had a share in profits for his labour was also a partner 111 Ind Cas 686 It is not necessary that all the partners should share the losses and they may agree to draw a salary instead of a share in profits 51 B 342=29 Bom L R 107=100 Ind Cas 1025 When in addition to his salary the person was to receive "10 per cent as commission on net profits, held 10 per cent was a share in profits 81 Ind Cas 17=28 C W N ... s may be partner in ... 1922 Nag 96 A partne ... or that the object of ... 122 Ind Cas 342. There is nothing illegal in persons combining to bid for and take a license to conduct a toddy shop in their joint names 114 Ind Cas 655 Creditors jointly advancing money do not become partners even though they possess a right to

share profits 65 Ind Cas 368 Where husband took his wife in partnership and fixed her share, but reserved power to take more partners or determine her share held there was a partnership 25 Bom L R. 1225=77 Ind Cas 699 In the absence of agreement, one partner cannot charge the others with any sum as compensation in the form of salary for special services 108 Ind Cas 724 Co-owners merely as such are only tenants in common of the ship ; but if it is employed in carrying freight

the trade has been carried on by persons acting on his behalf When that is the case he is liable to the trade obligations and entitled to its profits, or a share of them It is not strictly correct to say that his right to share in the profits makes him liable to the debts of the trade The correct mode of stating the proposition is to say that the same thing which entitles him to the one makes him liable to the

same case *Lord Wenseleydale* tedly a branch of the law of make more easy of solution rinciple were more cautiously first section of his work on f the partnership'" See also y v *Driver* 5 Ch D 478, *British Homes Assurance* v *Paterson* (1902) 2 Ch 404, *Beckham* v *Drake*, 9 M & W. 79.

Firm—The word "firm' is a short, collective name for the individuals who constitute the partners, and the name under which they trade is their firm name Partnership Act, 1890 (53 & 54 Vict c 39) s 4 It is not the name of a Corporation, it is a short name for X, Y and Z carrying on business in partnership *Ex parte Harding* (1879) 12 Ch D 557 C A The firm name is a mere expression, not a legal entity *Sadlar* v *Whiteman* (1910) 1 K B 868 per Farwell, L J at p 889, *R* v *Holden*, (1912) 1 K B 483 C A, *Halsbury*, Vol XX p 5

Partnership not created by status.

5 The relation of partnership arises from contract and not from status ,

and in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business

should be made for the rights and y in cases where the *karta* of a acting for the joint family and ndia have uniformly held that in

such a case the *karta* or the manager alone r the stranger is entitled and bound to treat on 116) We think that since the Hindu Law in this way the members of the family who

ɔ us that to ene in the ersh p law

is created by operation of law and not by contract It is not therefore a firm within the meaning of the section 8 Mys L J 441, 61 C 975=38 C W N 914

Section 6—As mention statement of the rule in *Cox* Bill in a highly generalise series of rules having the section (3) of section 2 reproduces along with section 3, what was kno n as Bovill s Act (28 and 29 Vict c 86) whose history is well known Section 2 has been held by the Court in many cases not to have superseded the rule in *Cox* v *Hickman*, which is of the rules in that se

' Bovi profits, was repealed 1 3, but it would have been better to have omitted it and to have expressed more emphatically the principle laid down by the House of Lord in *Cox* v *Hickman* and to have left that principle to be practically worked out by the Courts'—*Notes on Clauses*

Mode of determining existence of partnership

6 In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm regard shall be had to the real relation between the parties as shown by all relevant facts taken together

Explanation I—The sharing of profits or of gross returns arising fron property by persons holding a joint or common interest in that property does not of itself make such persons partners

Explanation II—The receipt by a person of a share of the profits of a business or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business,

and in particular, the receipt of such share or payment—

(*a*) by a lender of money to persons engaged or about to engage in any business,

(*b*)

(*c*)

(*d*)

the sale of the goodwill or share thereof

does not of itself make the receiver a partner with the persons carrying on the business

Notes—Th s section is a comprehensive statement of the rule in the leading case on the nature of partnership (*Cox* v *Hickman*, 8 H L C 268) which has been followed in innumerable decisions since 1860 but has not been

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them not to be partners The course taken by the Judges has been to examine all the

agree

cular

and

ded to guide the Courts in India along these lines—*Notes on Clauses*

Explanations—Explanations I and II are a compromise between section 2 of the Partnership Act 1890 and Lindley s view As the rule in *Cox* v *Hickman* has been given statutory expression in th s section, it seems unnecessary to reproduce the elabor

ate, indirect, though only partial, expression of it in section 2 of the English Act, nevertheless that section contains some useful propositions of law for the guidance of the Courts which may fairly be treated as rules subsidiary to and explanatory of the central rule contained in section 6; and the Act so treats them In this perspective they are not entitled to the eleborate detailed expression given to them in the English Act. Explanations I and II accordingly reproduce section 2 of the English Act in a condensed form

Report of the Select Committee—"We have transposed clause 6 so as to make it clause 5; and we have transformed clauses 7 and 8 into Explanations attached to clause 6 (original clause 5) we consider that this re arrangement will make it clearer that the sharing of profits gross return etc, is strong evidence of partnership though not in itself conclusive evidence The clauses as originally arranged, might have had the effect of diminishing the value of these facts as evidence".

[illegible] does *facie* [illegible] nces [illegible] by [illegible] ugh [illegible] for [illegible] firm [illegible] the [illegible] ing [illegible] v. [illegible] ion [illegible]

[illegible] owners [illegible] Rang. 120 [illegible]

[illegible] under this section and does not itself constitute a partners[illegible] 1903) Vol II, Contract 10 A partner who is to receive share in profits but not to suffer in loss, is not a partner although he advances money 21 Bom L R 190 Merely sharing in profits does not create a partnership, and other circumstances such as sharing in loss must be looked into 87 Ind Cas 663, see also 106 Ind Cas 308 Mere co-owners of land does not make co owners partners 6 R R 17=A I R 1933 Rang 12

7 Where no provision is made by contract between the partners for the duration of their partnership or for the determination of their partnership, the partnership is "partnership at will."

Partnership at will

Notes—The English law uses the expression "partnership at will" in section 27, but does not contain any definition of "parnership at will" in section 26 it merely paraphrases the expression in these terms—"Where no fixed term has been agreed

... entered into for ... ise to ... nded ... ld be ... case ... rtner ... part ... eal in England, however, rejected the contention and held that as the duration of the partnership was provided for in the partnership agreement, it was a partnership for a fixed term [*Moss* v *Elphick*, (1910) 1 K B. 846] To get over the difficulty felt in ... —*Notes on Clauses* ... ce, from the ... or dissolution ... ng plaint in a ... at will 31 C. W. N 857 P. C

Particular partnership

8. A person may become a partner with another person in particular adventures or undertakings

Notes—This is new matter and is inserted to meet cases which are probably much more frequent in India than in England The practice of establishing "particular partnership" is much favoured by Indian firms with numerous branches, and the practice should not be hampered by doubts regarding the extent of the liabilities of the 'particular partner"

The note under clause 4 mentions the three elements in the definition of partnership The application of these tests to explanatory clauses following affords some estimate of the value of the definition, as these explanatory clauses are all based on ...

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER

General duties of partners

9. Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative

Notes—This section is section 257 of the Indian Contract Act, 1872. It appears in the English Act, 1890, in a severely pruned form in section 28, on which *Underhill* comments that "it seems regrettable that the provisions of the Act of 1890 do not affirm this particular general principle, and the omission is the more remarkable because section 257 of the Indian Contract Act provides that the partners are to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render accounts etc. A broad general principle of this kind is just what one would expect to find in a Code, but it is not to be found in the English Act which treats the subject matter inadequately, by a ... ll's Principles ... legal but it is ... which are not

Utmost good faith is required in dealings between partners Sleeping partners can challenge settlement arrived at on faith of working partners' representations 123 Ind Cas 596

Duty to idemnify for loss caused by fraud

10 Every partner shall idemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm

Notes—*This section is* considered along with section 13 'As regards sub clause (f) we consider that ...

section) relatin[illegible] to indemnify for fraud absolute and not subject to contract *Report of the Select Committee*

Determination of rights and duties of partners by contract between the partners

11 (1) Subject to the provisions of this Act that mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing

Such contract may be varied by consent of all the partners and such consent may be express or may be implied by a course of dealing

Agreements in restraint of restraint

(2) Notwithstanding anything contained in section 27 the Indian Contract Act, 1872,* such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner

Notes—Sub-clause (1) expresses the rule contained in section 19 of the English Act ar[illegible] The clause is an e[illegible] law, namely that a [illegible] r own affairs amongst themselves It will allow arrangements to be made from time to time [illegible] pursuance [illegible] and VI, [illegible] which are

Sub-clause (2) reproduces exception 3 to section 27 of the Indian Contract Act 1872* The subject matter seems to fit in more aptly here and the exception will accordingly be repealed —*Notes on Clauses*

[illegible] terms of a partnership even if evidence [illegible] mutual consent, and the mode of dealing is sufficient evidence of such variation. [illegible] 890 (53 & 54 Vict c. 39), *England* v [illegible] R 496, *Revale*, 3 De G M & G 272, Vol XXII p 22

The conduct of the business

12 Subject to contract between the partners—

(*a*) every partner has a right to take part in the conduct of the business,

(*b*) every partner is bound to attend diligently to his duties in the conduct of the business,

[illegible] ordinary matters connected with the business [illegible] the partners and every partner shall [illegible] ion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners, and

(*d*) every partner has a right to have access to and to inspect and copy any of the books of the firm

* IX of 1872

Sections 12 and 13—Section 24 of the English Act has been split up, for greater ease in reading into these two clauses under which the subject matter has been re-arranged under the heads of the conduct of the business and rules of mutual liability The only provision omitted is clause 7 of the English section, which has been included in clause 31 The clauses cover most of the matter in section 253 of the Indian Contract Act, 1872

Some drafting changes have been made notably in clause (c) of section 13, which [illegible] been recast [illegible] is entitled to [illegible] been raised [illegible] of 6 per cent [illegible] into clause (e) [illegible] vhich is new [illegible] ards the latter clauses 26 and 27 make the whole firm liable to third parties for wrongful acts or omi- [illegible] of idemnity to the other [illegible] or omissions of a partner [illegible] it page 472, where he states [illegible] revious law The absence of [illegible] in one of two ways (1) It [illegible] e general law of principal [illegible] provision to the contrary, [illegible]

[illegible]

but we use it as meaning that degree of neglect shown by abstention from an obvious duty attended by a knowledge of the likely results of the abstention — *Notes on Clauses*

Clause (a)—The powers of management are co extensive in the absence of any contract to the contrary *Donaldson* v *Williams*, 1 Cr & M 345

Clause (b)—The diligence required of a partner may be limited by the articles to that part of businees which is conducted by him. *Smith* v *Mules*, (1855) 9 Hare, 556; *Halsbury*, Vol XXII, p 49 A partner shall exercise that kind of diligence which a prudent man employs in managing his own affairs 53 Ind Cas 2

Clause (c)—The majority must act in good faith and every partner must have the opportunity of being heard *Const* v *Harris*, (1824) Turn & R. 496. As regards what is not consistent with good faith *Vide Great Western Rail Co* v *Rushout*, 5 De G & Sm 290, 310, see also *Halsbury*, Vol XXII p 49 Capitalist partners can not compel working partners to submit to their wishes in as much as on dissolution all partners have equal rights A I R 1930 Sind 49, 89 Ind Cas 577

Mutual rights and liabilities

13 Subject to contract between the partners—

(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits ;

(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent per annum ,

(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances , and

(f) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm

Clause (a)—Even a managing partner in the absence of a contract to the contrary is not entitled to any remuneration *Hutchison* v *Smith*, 5 I Eqr R 117 , *Thornton* v *Proctor*, 1 Anst 94 ; *Robinson* v *Anderson*, 20 Beav 98 ; *Holmes* v *Higgins*, 1 B & C, 74 ; *Halsbury*, Vol XXII, p 50

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there is a rise in the value of a real estate or plant, it may be considered that profit has accrued *Robinson* v *Ashton*, (1875) L R 20 Eq 25 The presumption of inequality in

v *Barrett*,

rise to that

cases, the p

Anderson 7

more work, *Webster* v. *Bray*, 7 Hare 159

Clause(d)—This clause corresponds to s 24 (3) of the English Partnership Act 1890 ; see also *Spartali* v *Constantinidi*, 20 W R 823

Clause (e)—*Vide Write* v *Hunter* 5 Ves 792 , *Robinson's Executors Case*, 6 De G M & G 572 , *McOwen* v *Hunter*, 1 Dr & W 347 , *Evans* v *Yeatherd*, (1824) 2 Bing 133 , *Browne* v *Gibbins*, 5 B Part Cas 491 , *Prole* v *Masterman* 21 Beav 61 ; *Halsbury*, Vol XXII, p 60

14 Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought in to the stock of the firm, or acquired, by purchase or otherwise by or for the firm or for the purposes and in the course of the business of the firm, and includes also the good will of the business

The property of the firm

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm

Sections 14 and 15.—These clauses contain the substance of sub-section (1) of section 20 and of section 21 of the English Act, and of section 253 (1) of the Indian Act but the matter has been re-arranged An important difference is the

now specifically included among

ween the partners, be included

shares —*Notes on Clauses*

Purchase in firm's name with firm's money and making costly improvements with firm funds are indications which show that property is partnership property A I R 1929 Sind 182 , see also *Waterer* v. *Waterer*, L R 15 Eq 402 Property given to

ed *Camp*

ired with

, *Wray*

Application of the property of the firm

15 Subject to contract between the partners, the property of firm shall be held and used by the partners exclusively for the purposes of the business

Personal profits earned by partners

16. Subject to contract between the partners —

(*a*) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm ,

(*b*) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business

Section 16—Sections 29 (1) and 30 of the English Act corresponding to sections 258 and 259 of the Indian Act, have been run together into this clause, without change of substance Sub section (2) of section 29 has been placed in the Chapter on the dissolution of the firm where it appears as clause 50

Clause (a)—This corresponds to section 29 (1) of the English Partnership Act 1890 (53 & 54 Vict c 39) A partner cannot claim commission from a firm of partnership 36 Ind Cas 210

Clause (b)—This corresponds to section 30 of the English Partnership Act, 1890 (53 & 54 Vict C 39), see also *Dean* v *Mo k Dowell*, 8 Ch D 345 C A But a partner can carry on se[illegible]
facility to push private
liability to account for
67 Ind Cas 10

17 Subject to contract between the partners—

Rights and duties of partners after a change in the firm ,

(*a*) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be ,

after the expiry of the term of the firm, and

(*b*) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will , and

where additional undertakings are carried out.

(*c*) where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings

Notes—Section 17 Gives general rules for the determination of the rights and duties of the partners after the happening of events which would otherwise leave those rights and d[illegible]

[illegible] proceeds to carry out other undertakings

Clause (b)—*Vide Camp*[illegible]
(1880) 13 Ch D 863 *Daw*[illegible]
44[illegible], *King* v *Chuck*, 17 B[illegible]
L. R. 19 Eq 599 , *Neils*[illegible]
10 Ch D 6[illegible]6

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES

Partner to be agent of the firm

18 Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm

Notes—This Chapter is mostly taken up with the statement and development of the principle that each partner is the agent of the firm In arrangement it differs widely from the corresponding part of the English Act It elaborates some of the provisions of that part and omits others and introduces some new matter

Clause 19 begins with the first principle given in section 5 of the English Act—that every partner is an agent of the firm It also contains the most important principle in section 5 of the English Act which defines the general extent of a partner s agency, namely, that an act of a partner which—

(*a*) is done to carry on business of the kind carried on by the firm, and
(*b*) is done in the way usual in such a business

binds the firm The remainder of the English section is contained in clause 20

The second paragraph in sub clause (1) of clause 19 introduces a convenient term intended to avoid confusion when references are made to the authority of a partner as agent The authority defined in the first paragraph of the sub-clause has been variously designated as 'implied', "ordinary, "apparent" and "ostensible' and it is sometimes not clear what the exact meaning of these terms may be The word "impl ed is favoured by Lindley and seems to be the most suitable as the kind of agency contemplated is one which flows from, or is implied by, partnership of partner

extracted from section
s an exhaustive account
implied authority The

Clause (*a*) reproduces *Stead* v *Salt*, (3 Bing 101) which has been followed in 22 All 135

Clause (*b*) is *Alliance Bank Ltd* v *Kearsley*, (L. R 6 C P 433)

Clause (*c*) is a proposition on the law of agency contained in many rul ngs, *see* Lindley page 195

Clause (*d*) is contrary to *Harwood* v *Edwards*, cited by Lindley at page 354, a case which seems to be unreported It seems unreasonable to hold that a partner cannot compromise a claim by the firm but that he can withdraw a suit The clause as drafted seems best suited to Indian conditions

Clause (*e*)—This is *Hambidge* v *De la Crouee* (3 C B 742)

Clause (*f*) follows *Sharp* v *Milligan*, (22 Beav 606) and 16 Bom 568 setting aside 19 Mad 471

Clause (*g*) is convered by *Harrison* v *Jackson*, (7 T. R. 207)

Clause (*h*) is from *Singleton* v *Knight* (13 A. C 788)

We are equally divided on the value and soundness of this sub clause, but have agreed to let it stand in the Bill as its deletion will be a simple matter for the Legislature Those of us who would retain it argue as follows —

exposition But certain rules have already l

ow and expensive method of
of the propositions contain

ed in the sub clause or their validity as general propositions of Eng'ish law we who favour their retention regard them as useful guides in India in the absence of a

contract to the contrary They should be particularly valuable in Courts which do not possess an extensive library"

On the other hand, those of us who would delete the sub clause argue as follows:—

'The sub clause assumes that in the contemplation of the Legislature the exercise of these powers is not a usual method of carrying on business by a partner or partners Wo do not think that there is any warrant for such a general assumption A close examination of the decided cases cited in Lindley shows that, in regard to some of the points they are based upon the historical accidence of

subject in Story in section 114 points to the conclusion that to some extent the rule is based, not upon any intrinsic principle of parnership law but upon the ancient reason that it is not right to remove any matter from the cognisance of the established Courts of justice These Courts are best equipped to investigate the merits of a case by proper legal proof and testimony; whereas the equipment of arbitrators is slender From the note in Story under section 114 we gather that some of the American Courts have refused to lay down any such general restriction and have

ds From Comyn's

for a reference to

be further observed

sale of goods, and

y be to deprive him

of the power to carry on business in the usual way Clause (*c*) deals with compromising or relinquising any claim or portion of a claim Story in section 115 states it as an undoubted proposition of law that a partner may release or even compound or compromise a partnership debt In 3 C B 743 at page 745 Maule J states the law to be that a partner may release debts because he has authority to receive them The decision in 11 M & W page 84 also lends support to the view that a partner

release in that

action one may

nduce the Court

ither plaintiff and

operates as a bar to the action The cases cited in Lindley at page 195 in support of the proposition that a partner has no authority to compromise do not seem to

They are all cases

him in discharge

partner to take a

ase in 22 Beav 606

that in the case

of partnership at will a partner cannot bind the firm by taking a lease for twenty one years Clause (*g*) as to tranfer of immovable property is taken from Lindley pages 196 and 200 The rule in England is based upon the accidents of English

law

The

of

by the operation of section

ige by deposit of title deeds

Presidency towns and there

elf to the principle that in the

absence of a contract to the contrary it is not a usual method of carrying on business Similarly the obtaining of a

of the business of a firm I

clause should be deleted

in any case the excise of

way of business and

e very nature of things,

Report of the Select Committee—'We have split up sub-cluse (1) into two separate provisions—clause 19 and sub clause 19 A (1) In clause 19 (=this section)

is an agent of the firm, but the words subject to the pro ... ord 'affairs into 'business' Act and seems to be the more

Partners agents of firms—Generally speaking partners are the agents of each other and of the firm for the purpose of carrying on the partnership business in the usual way *Halsbury* vol XXII, p 24, see also *British Homes Assurance Corporation* v *Paterson* (1902) 2 Ch 404

Implied authority of partner as agent of the firm

19 (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm

The authority of a partner to bind the firm conferred by this section is called his "implied authority"

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(*a*) submit a dispute relating to the business of the firm to arbitration,

... me, by the firm

Notes—In the original bill it was part of clause 19 But the Select Committee divided clause 19 into two clauses, namely, clauses 19 and 19A (=this section) 'We have confined sub clause 19A (1) to the statement of a partner s implied authority as agent of the firm

'As regards sub clause (2) of clause 19 [now sub clause (2) of this section] it is clear from the opinions received that, in Calcutta particularly, it is a trade custom that the partners make contracts of sale containing a clause referring disputes to arbitration This sub-clause as it stands will make this practice impossible in the ... may also perhaps lay open to ... ng contracts It seems desirable ... to some extent, and we propose to ... rds in the absence of any usage or custom of trade to the contrary These words are taken from section 1 of the Indian Contract Act *Report of the Select Committee*

Sub section (1)—*Vide Brettle* v *Williams* 4 Ex 623, *Bottomley* v *Nuttall* 5 C B N S 122 A power of a partner cannot be delegated without the consent of the remaining partners *Re Robinson*, 1 Mont D & De G 475 A payment to a partner is a valid payment to the firm, while a release by a partner is also valid 32 P L R 583

Clause (a)—*Vide Adams* v *Bankhart*, 1 Cr M & R 681, *Stead* v *Salt*, 3 Bing 101, *Re Crowder & Co* 2 Gl & J 295, *Hatton* v *Rayle*, 3 H & N 500 43 Ind Cas 508 92 Ind Cas 705, 107 Ind Cas 793, 83 Ind Cas 539, 71 Ind Cas 734

Clause (b)—There is no implication of law from the mere existence of trade partnership that a partner has authority to bind the firm by opening a bank account on its behalf in his own name *Alliance Bank Ltd* v *Kearsley*, L R 6 C P 433 *Halsbury* Vol XXII, p 33

Clause (c)—A partner has implied authority to release a debt owing to his firm *Hawkshaw* v *Parkins* 2 Swan 539 He may also release a cause of action *Aston* v *Booth* 4 Moore (P C) 192, *Barker* v *Richardson* 1 Y & J 362, *Furnival* v *Weston*, 7 Moore (P C) 356 80 Ind Cas 583

Clause (e)—Without authority a partner cannot consent to judgment (*Hambidge* v *Dela Crouce*, 3 C B 7?4) or to compromise an action *Crane* v *Lewis*, 36 W R 480

that of the firm—though not strictly accurate—it binds other partners—*Faith* v *Richmond* 11 Ad & Ll 339; *Williamson* v *Johnson*, 1 B & C 146, *South Carolina* v *Case*, 8 B & C 427, *Halsbury*, Vol XXII, page 33 Words which may be construed as merely description or designation of person signing will not make the firm liable A I R 1930 Sind 4=126 Ind Cas 741

Effect of admissions by a partner

23 An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business

Notes —Clauses 23 and 24 are sections 15 and 16 of the English Act with slight verbal modifications

Effect of notice to acting partner

24 Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner

Liability of a partner for acts of the firm

25 Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner

Section 25 —This is the general statement of the liability of a partner for the liabilities of the firm ... Contract Act 1872, merely provide that each ... the firm but does not say that the partners ... ection 9 of the English Act makes the partners liable jointly for contractual liabilities and section 12 makes them jointly and severally liable for tortious liabilities Section 43 of the Indian Act makes joint promisors generally liable jointly and severally and this general principle has been applied to partnership liabilities in India (6 Bom 706, 17 Bom 6) The clause expresses this principle The liability relates to both contracts and torts

In case of a decree against two persons jointly and severally each is liable to pay half and to indemnify if he pays the full amount A I R 1928 Mad 588=110 Ind Cas 484 The law that the creditor is not bound by the arrangements between the partners old and new is more for the benefit of creditor than to his detriment 35 C W N 393 Apart from privity creditor cannot rely on agreement between partners *inter se* such as that the new partner would be liable for antecedent debts 98 Ind Cas 257 But it cannot be laid down as a general rule of law, without any ... circumstances be liable for the debts ... a partner To determine whether he ... onsidered (1) whether the new firm ... (2) whether the creditor has agreed to discharge the old partnership from its ... R 1926 Mad 1138 A partner is not liable for the action of other partners unless the same is on behalf of the partnership 84 Ind Cas 199 When a firm ceases to exist but some of the partners carry on business under the same name the retiring partners cannot be made liable for any transaction entered into after the dissolution 68 Ind. Cas 932=A I R 1922 Lah 466 One partner is always liable for partnership debt unless implied or express restriction appears on the bill or promissory note 35 Ind Cas 219, see also 23 C W N 500, 47 Ind Cas 958 So partners are jointly liable for debts and obligations of the firm *Re Manley, Exparte Wilson* 2 D M & De G 57, *Re Smith*, 12 Ch D 557, *Smith* v *Blyth*, (1891) 1 Ch 337 *Re Collie* 8 Ch D 807 C A

Liability of the firm for wrongful acts of a partner

26 Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm or with the authority of his partners, loss or injury is caused to any third party or any penalty is incurred, the firm is liable therefor to the same extent as the partner

Notes —Clauses 26 and 27 describe the tortious acts for which a firm is liable They reproduce sections 10 and 11 of the English Act with very little change

English Cases—*De Ribeyre* v *Barclay* 23 Beav 107, *Rhodes* v *Moules* (1895) 1 Ch 236 C A *Hamlyn* v *Houston* (1903) 1 K B 81, 85 (C A), *Ashworth* v *Stanwise*, 3 E & E 701, *Mellor* v *Shaw*, 1 B & S 437

Innocent partners are liable for the misrepresentations of one of their partners in matters connected with ordinary business of the firm *Rapp* v *Latham* 2 B & Ald 795 *Halsbury* Vol XXII p 31, see also *Biggs* v *Bree*, 30 W R 278 (Eg), *Sadler* v *Lee*, 6 Beav 324, *Marsh* v *Keating* 2 Cl and Fies 250 H L, *Reid* v *Rigby Co* (1894) 2 Q B 40, *St Anbyn* v *Smart*, L R 5 Eq 183, *Dundonald* v *Masterman* L R 7 Eq 504, *Bishop* v *Jarsey*, 2 Drew 143

Liability of firm for misapplication by partners

27 Where—

(*a*) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(*b*) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm,

the firm is liable to make good the loss

Notes—The [illegible] of third person s money by [illegible] *Blair* v *Bromley* 2 Ph [illegible] *oodwin*, 36 L Q Ch 578 [illegible] ness by the firm, other partners are not liable *Sims* v *Button* 5 Exch 802 *Bourdillon* v *Roche* 6 W R 618, *Coomer* v *Broomley*, 5 De G Sm 53[illegible]

28 (1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented to be a partner in a firm is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit

Holding out

(2) Where after partner s death the business is continued in the old firm name the continued use of that name or of the deceased partner s name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death

Notes—Clause 28 introduces the doctrine of 'holding out It represents sections 245 and 246 of the Indian Act and of s 14 of the English Act—*Notes on Clauses*

[illegible] may be partners towards the [illegible] *per Romilly* M R In *Re* [illegible] *ugh* v *Carver*, 2 Hy B L [illegible] 82 *Halsbury* Vol XXII, p [illegible] ying h s l ab lity as a partner [illegible] v *Court of Words* L R 4 [illegible] *illard* 3 M & W 357, *Kirk* [illegible] ng out appl es only in favour of those to whom such representation was made and who acted on that faith 87 Ind Cas 905=A I R 1925 Sind 310, see also 87 Ind Cas 508

Clause(2)—*Vide Devaynes* v *Noble* 1 Mer 529, *Vulliamy* v *Noble* 3 Mer 593 614

29 (1) A transfer by a partner of his interest in the firm either absolute or by mortgage, or by the creation by him of a charge, on such interest does not entitle the transferee during the continuance of the firm to interfere in the conduct of the business or to require accounts or to inspect the books of the firm but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners

Rights of transferee of a partner s interest

(2) If the firm is dissolved or if the transferring partner ceases to be a partner the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution

Notes—Clause 29, like clause 30, relates to persons who are third parties but have a footing inside the firm Clause 29 relates to assignees of the whole of a partner's share in the firm These persons may be complete strangers to the non transferring partners and may be personally objectionable to them The clause which closely follows section 31 of the English Act gives the assignee very limited rights There is no corresponding provision in the Indian Act—*Notes on Clauses* A ... share to a third person absolutely or by way of security but

53 & 54 Vict c 39)

ortgagee of a share

by equities arising

ment *Cavender* v

, *Kelly* v *Hutton*, (1868) 3 Ch App 703, *Dodson* v *Downey*, (1901) 2 Ch 620 An assignee of a share is entitled to the share of profits found due to his assignor (*Glyn* v *Hood*, 1 Gift

assigning partners would be entitled and the assignee must accept the accounts agreed to by the partners He cannot ordinarily require any accounts of the partnership transactions before dissolution or interfere in any way with the management or administration of the partnership 34 Ind Cas 513, 87 Ind Cas 812, 10 Pat 792=12 Pat L T 361=133 Ind Cas 361, 60 M L J 527 An agreement to assign his interests in a firm owning immovable property requires to be registered 132 Ind Cas 305=60 M L J 527=A I R 1931 Mad 580

30 (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners for the time being, he may be admitted to the benefits of partnership

Minors admitted to the benefit of partnership

(2) such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection

of his share shall be determined by

ordance with the rules contained in

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm and thereupon the Court shall proceed with the suit as one for dissolu

nt of the share

ners.

of his obtain

rship which

ever date is later, such person may give public notice that he has elected to

become or that he has elected not to become a partner in the firm, and such

become a partner in

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person has no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact

(7) Where such person becomes a partner,—

(*a*) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership and

(*b*) his share in the property and profits of the firm shall be the share to which he was entitled as a minor

(8) Where such person elects not to become a partner,—

nue to be those of a minor under

public notice,

acts of the firm done after the date of the notice, and

(*c*) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub section (4)

(9) Nothing in sub section (7) and (8) shall affect the provisions of section 28.

under the

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rally, while

of the firm

actions In view of section 11 of the Indian Contract Act and the decision of the Privy Council in *Mahori Bibi's* cases as to the general incapacity of an infant to enter into a contract we feel that there is no justification, with reference to the law of partnership only for departing from this principle of the Indian law, and thereby unsettling it At the same time it has been the law since 1866 that a minor may be admitted to

ally liable for the

within a reasonable

he Contract Act

an that the minor

however in that it does not in express terms, provide that the minor on attaining age becomes a partner, if he does not repudiate his connection with the firm within a reasonable time though this principle is implied in section 248 The Act is also defective in omitting to lay down fully the rights and remedies of a minor sharer as such Clause 30 while retaining the existing law as to the minor's position is intended to remedy the defects above pointed out Sub clause (1) makes it clear that a minor cannot be a partner in a firm, but that he can be admitted 'to the benefits of partnership and that he can be given this footing in the firm only by the express consent of the partners, and cannot be thrust upon them, for he is a potential partner and his introduction should be subject to the consent of all the part

states the equitable principle that the minor who has had no active part in building up the business and its connection is not entitled to a share of the goodwill Sub clause (6) makes it clear that on attaining majority the minor has the option of becoming a partner in the firm or of severing his connection with it If he chooses the former he need take no definite action and he becomes personally liable as a partner as if he had been a partner from the date of his admission to the benefits of partnership If he chooses the latter course, he can make his choice effective only by giving public notice within a reasonable time that he has severed his connection with

the firm. If he fails to give notice, third parties will be entitled to treat him as a partner. As regards the nature of a public notice, see clause 71.

Report of the Select Committee—"In sub-clause (2) we have made it explicit that a [illegible] the benefits of partnership may be entitled to such [illegible] sider [illegible] s of [illegible] the [illegible] his share of the property or profits except when he wishes to sever his connection with the firm.

"We have deleted sub clause (5) as we prefer to leave all arrangements relating to the minor's share of the property to be settled by agreement made when the [illegible] it the [illegible] firm [illegible] period [illegible] during [illegible] great [illegible] opose [illegible] or not [illegible] n the [illegible] e, or [illegible] sub- [illegible] est of [illegible] artner [illegible]

[illegible]

453; 41 M. 824 A minor partner of a firm cannot individually be adjudged an [illegible]

the partnership [illegible] v. N. 500=26 C. L. J. 280 This clause see[illegible] in a more favourable position than in England [illegible] 874=69 Ind Cas 81. It is undoubtedly du[illegible] creditors of the firm. Where [illegible]

CHAPTER V.

INCOMING AND OUTGOING PARTNERS.

31. (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

Introduction of a partner.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner

Notes—Though Chapter VII on the Registration of Firms is the most important departure in the Bill as regards substance, this Chapter is the most important departure as regards form As mentioned in our Report, it contains no material change in the law of partnership, but collects together and sets out in a convenient form all rules relating to the coming in of a partner, and all rules relating to the going out of a partner in so far as these rules do not relate to the dissolution of the firm or to the consequences of dissolution As a result of the limitation on the selection of these provisions they relate chiefly to what is referred to in various places in the Bill as a "change in the firm' that is, a change in the constitution of the firm which has not resulted in the dissolution of the firm However a few provisions such as clause 34 (1) and clause 37 are of general application, that is they apply where the firm continues without dissolution and also where a dissolved firm is reconstituted and carries on the business with the property and assets of the dissolved firm For this reason the Chapter is given the non-committal title of "Incoming and Outgoing partners" rather than the restricted title of 'Change in Firm" which would otherwise have been more suitable

Section 31—The main proposition in sub clause (1) comes from clause (7) of section 24 of the English Act and sub-clause (6) of section 253 of the Indian Act The general idea is that the consent of all existing partners is required to the introduction *of a new partner, in order that the firm may work harmoniously* This is a fundamental principle of the law of partnership *Crawshay* v *Maule*, 1 Swan 495, 539 An [illegible] to [illegible] G [illegible] the [illegible] introducing a new partner at any time or juncture the contract will be binding on the partners even though when the time comes or the juncture arises one or more of the partners may be unwilling to accept the new partner

Sub clause (2) relates to the liability of a new partner for the existing debts of the firm and is taken from section 17 (1) of the English Act and the latter portion of 279 of the Indian Act The sub clause maintains the peculiar higher liability under sub clause (6) of clause 30 of the minor potential partner who elects to become a full partner The clause makes no provision for the liability of the new partner for future *debts of the firm as this is covered by the general provision of clause 25*

Retirement of a partner.

32 (1) A partner may retire—

(*a*) with the consent of all the other partners,

(*b*) in accordance with an express agreement by the partners or

(*c*) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement :

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm

Notes—In this clause the word 'retire is properly confined to cases where a partner withdraws from a firm and the remaining partners continue to carry on the

business of the firm without dissolution of partnership as between them It does not cover the case where a partner withdraws from a firm by dissolving it which should properly be referred as a dissolution and not as a retirement

According to Lindley (page 698) the right of a partner to retire is very restricted This clause appears to widen the right as set out in Lindley's three rules, but in fact it does so to a very small extent Clause (*a*) corresponds to Lindley's first rule and covers cases where a partner is allowed to retire at any time on an amicable arrangement then made with his partners Clause (b) appears to be new but it is probably included in Lindley's first rule It covers cases where the retirement is made in pursuance of a previous arrangement consented to by all, as is frequently done in the articles of partnership Here however at the time the retirement occurs the partner has the right to retire whether or not his co partners are still agreeable Clause (*c*) is merely a very slight extension of the right of a partner to dissolve a partnership at will by notice (*vide* clause 43 of the Bill and section 32 of the English Act) It is hoped that this clause will soften to some extent the hard rule laid down by Lindley on page 697 that "there is only one method by which a partner can retire from a firm without the consent of his co partners, and that is by dissolving the firm" The clause will allow a partner in a partnership at will to retire from the firm without dissolving it if he has no claim against the firm or thinks his claim will be settled amicably without a winding up His right to dissolve the firm if he considers that to be the better course, is unimpaired

Sub clause (2) represents sub section (3) of section 17 of the Partnership Act, 1890 Sub section (2) of that section is covered by clause 25 *Vide Newman* v *Clay*, 14 East 239, *Court* v *Berlin* (1897) 2 Q B 396

Sub-clause (3) represents section 36 of the English Act, confined to the case of [illegible]

[illegible]

[illegible] *ew* v *Wyatt*, 5 C & P 397 [illegible] *ry* Vol XXII, page 38

33 (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners

Expulsion of a partner

(2) The provisions of sub sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner

Notes —This clause regards expulsion in the same way as clause 32 regards retirement, that is it makes the proper assumption that the firm continues after the expulsion without a dissolution of partnership as between the remaining partners

Sub clause (1) embraces section 36 of the English Act and also the rule in *Blisset* v *Daniel* (10 Hare 493) whereby a power of expulsion must be exercised *bona fide* A full discussion of this rule is given on pages 516 and 517 of Lindley See also *Barnes* v *Youngs*, (1898) 1 Ch 414, *Carmichael* v *Evans*, (1904) 1 Ch 486

It must not be exercised for the exclusive benefit of one or more partners individually but for the benefit of the whole partnership *Blisset* v *Daniel*, 10 Hare 493 (522), *Stuart* v *Gladstone* (1879) 10 Ch D 626, 650, *Halsbury* Vol XXII page 88 A partner who is to be expelled should be given opportunity to meet the charge against him *Barnes* v *Youngs*, *Supra*, *Wood* v *Wood* L R 9 Exch 190, *Russell* v *Russell* (1880) 14 Ch D. 471, see also 110 Ind Cas 500

Sub clause (2) places an expelled partner on precisely the same footing as a retired partner as regards his liabilities for existing and future debts of the firm There seems to be no valid reason for making any difference

Insolvency of a partner

34 (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made

Notes —The Indian law on the effect of the insolvency of a single partner is meagre It is contained in section 254 (2) of the Indian Contract Act, 1872, and is to the effect that when a partner has been adjudicated an insolvent any other partner may sue for the dissolution of the firm The provisions of the Partnership Act, 1890, contain more details but not many Sub section (1) of section 33 runs—'Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner From this it follows that when there is an agreement that the firm shall continue the bankrupt partner drops out and the remaining partners continue as such without a dissolution of their partnership Section 38, which provides for the continuance of the authority of the partners after dissolution for the purposes of the winding up of the affairs of the firm, states as a broad exception that 'the firm is in no case bound by the acts of a partner, who has become bankrupt This seems to be a rule which applies generally to bankrupt partners and not merely to such partners in this special circumstance of the winding up of the firm as may be seen from *Thomason* v *Frere*, (10 East 418) The view is stated clearly by Lindley on page 823 On general grounds also it seems reasonable that an insolvant who is incapable of obtaining credit for himself should not be allowed to obtain credit for or pledge the credit of a firm Clause 34 proceeds on these lines adopting them to the case of the continuing firm

Sub clause (1) states the principle that the insolvency of a partner severs his

antedates the dissolution back to the act
would be impracticable in India, and
be followed in this matter Hence the
has been selected as the date on which

the insolvant ceases to be a partner It is the adjudication and not the presentation of the petition which dissolves the partnership *Exparte Smith*, 5 Ves 295 The estate of the bankrupt after that date ceases to be liable for the partnership debts incurred after the bankruptcy, though the party dealing with the firm is ignorant of it *Halsbury*, Vol XXII, p 87

Sub clause (2) contains two rules (1) it lays down that the estate of the insolvent is not liable for any act of the firm done after the date of adjudication This rule is taken from sub section (3) of section 36 of the English Act, and it is justified by the general consideration that the adjudication of the insolvent is a notorious event and no further notice thereof is required either to old or to new customers of the firm (2) It also contains the complementary rule that the firm is not bound by the acts of the insolvant after the date of adjudication This is based on *Thomason* v *Frere*, cited above

Liability of estate of deceased partner

35 Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death

Notes —Clause 35 is derived from sub section (3) of section 36 of the English Act Like clause 34, it is confined to the case where the firm continues without dissolution Where dissolution has occurred, these matters are provided for in clauses 45 and 47

Subject to any arrangement between the partners a partnership is dissolved as regards all the partners by the death of any partner *Crawshay* v *Collins* 15 Ves 218 227 *Vulliams* v *Noble* 3 Mer 593 *Cranshay* v *Maule* 1 Swan 49, 508

100 Ind Cas 616, 86 Ind Cas 950, 11 Ind Cas 525, 80 Ind Cas 378, 46 Ind

Ind Cas 721 No notice of death is necessary
of the deceased partner for partnership debts contrac
v *Noble* 3 Mer 593, *Crawshay* v *Maule*, 15
p 86

Rights of outgoing partner to carry on competing business

36 (1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business but, subject to contract to the contrary he may not—

(*a*) use the firm name,

(*b*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before he ceases to be a partner

Agreements in restraint of trade

(2) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872,* such agreement shall be valid if the restrictions imposed are reasonable

Notes —Clause 36 relates to restrictions which are imposed on the activities of outgoing partners in order to prevent unfair competition with the firm Sub clause (1) is entirely new and presents some points of interest The typical and most frequent case is that of a partner who retires from the firm He has received, presumably, payment for the value of his share in the property of the firm and this property includes the goodwill of the

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fore, are a statement of the chief
dwill narrowed to the particular
to sell his share of the goodwill to his
detail under clause 57 which is of

the opening passage of sub-clause (1) whereby the right is given to a retiring partner to carry on business competing with that of the firm It is derived from the second exception to section 27 of the Indian Contract Act, which will be repealed

Right of outgoing partner in certain cases to share subsequent profits

37 Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm •

* IX of 1872

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or out going partner, and that option is duly exercised the estate of the deceased partner, or the outgoing partner or his estate as the case may be, is not entitled to any further or other share of profits, but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provision of this section

Notes—Clause 37 is section 42 of the English Act with a few verbal changes, and which the Indian standard rate of six per cent substituted for the English standard rate of five per cent

A partner continuing the business with partnership assets after dissolution must account for profits up to the winding up of the concern *Crashway* v *Collins*, 2 Russ 325; *Halsbury*, Vol XXII, p 63

Revocation of continuing guarantee by change in firm

38 A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm is in the absence of agreements to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Notes—This is section 18 of the English Act and section 260 of the Indian Act

CHAPTER VI

Dissolution of a Firm

Dissolution of a firm

39. The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm

[illegible]

Clause 39 contains the definition of 'dissolution of a firm This phrase is used in preference to 'dissolution of partnership which has an element of ambiguity as it may refer to the severance of the connection of one partner with the firm, or to the complete breakdown of the relation of partnership between all the partners Only the latter meaning is dealt with in this Chapter The severance of the connection of one partner only is dealt with in the previous Chapter —*Notes on Clauses*

Dissolution by agreement

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners

Notes—S 40 covers the case where all the partners agree that the firm should then be dissolved, and also the case where the dissolution occurs in pursuance of a contract previously made for example, in the articles of partnership

Compulsory dissolution

41 A firm is dissolved—

(*a*) by the adjudication of all the partners or of all the partners but one as insolvent, or

(*b*) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Notes—S 41 relates to events whose occurrence unavoidably dissolves a firm. Clause (*a*) is new, but needs no comment Clause (*b*) is section 34 of the English Act and section 255 of the Indian Act The proviso incorporates a suggestion made by Lindley at page 682 —*Notes on Clauses*

Clause (b)—Whenever on the happening of any event the partnership business itself or the carrying on of that by the members of the firm in partnership becomes

illegal, the partnership is *ipso facto* dissolved *Halsbury*, Vol XXII page 87 citing *Exposito* v *Bowden* 7 E & B 763 Ex Ch, *Griswold* v *Waddington*, 15 John Rep 57

Dissolution in the happening of certain contingencies

42 Subject to contract between the partners a firm is dissolved—

(*a*) if constituted for a fixed term, by the expiry of that term,

(*b*) if constituted to carry out one or more adventures or undertakings by the completion thereof,

(*c*) by the death of a partner, and

(*d*) by the adjudication of a partner as an insolvent

Notes—S 42 relates to events whose occurrence will dissolve the firm if there is no agreement to the contrary Clause (*a*) is clause (*a*) of section 32 of the English act, clause (*b*) is clause (*b*) of that section, clauses (*c*) and (*d*) are sub section (1) of section 33 of that Act—*Notes on Clauses*

Dissolution by notice of partnership at will

43 (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice

Notes—Section 43 relates to the dissolution of partnership at will It is taken from clause (*c*) and the last paragraph of section 32 of the English Act see also *Crawshi* v *Maule*, 1 Swan 495 508 *Peacock* v *Peacock* 16 Ves 49 *Heath* v *Sansom* 4 B & Ad 172 175, *Miles* v *Thomas* 9 Sim 606

Clause (2)—*Unsworth* v *Jordon* (1896) W N 2

Dissolution by the Court

44 At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely —

(*a*) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner,

(*b*) that a partner other than the partner suing has become in any way permanently incapable of performing his duties as partner,

(*c*) that a partner, other than a partner suing is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business,

(*d*) that a partner, other than the partner suing wilfully or persistently commit[illegible]
firm or
relating
partners to carry on the business in partnership with him,

(*e*) that a partner other than the partner suing has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner,

(*f*) that the business of the firm cannot be carried on save at a loss, or

(*g*) on any other ground which renders it just and equitable that the firm should be dissolved

Notes—S 44 gives in detail the grounds on which a partner may sue for dissolution of the firm Cla[illegible]
fications the six clause[illegible]
sub section (2) of sectior[illegible]
that sub section and is [illegible]

The English law on the effect of the assignment by a partner of his share is not clear; (Lindley, pages 694-5); and it is desirable to adhere to the Indian law on this point —*Notes on Clauses*

Clause (a)—*Jones* v. *Noy*, 2 My. & K 125 The insanity must be permanent *Ibid*

Clause (b)—*Whitwell* v *Arthur*, 35 Beav 140

Clause (c)—Dissolution can be granted by Court for misconduct of a partner But regard must be had to the nature of the partnership

Clause (d)—This clause includes breach of partnership agreement and unreasonable conduct *Vide Goodman* v *Whitcomb*, 1 Jack & W 589; *Loscombe* v *Russell*, 4 Sim 8, *Anderson* v *Anderson*, 25 Beav 199 Generally the Court interferes whenever
ness renders it
ness on the foc
Taylor, 2 Ves &
Beav. 56, *Halsb*
confidence has b
v *Shout*, 33 Beav 502, *Harrison* v *Tennant*, 21 Beav 482

Clause (f)—Dissolution is granted by Court where there is a failure to make profits *Jennings* v *Baddeley*, 3 K. & E J 78, *Bailey* v *Ford*, 13 Sim. 495, *Re Suburban Hotel Co* 2 Ch App 737 "If the purposes of the partnership cannot be carried into effect with any reasonable prospect of profit, the Court can, and does, dissolve the partnership" *Wilson* v *Church*, 13 Ch D 1 C A

Clause (g)—The Court may dissolve a partnership in any cases where circumstances have arisen which in its opinion, render it just and equitable to do so *Halsbury*, Vol XXII, p 94

Liability for acts of partners done after dissolution

45. (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub section (1) may be given by any partner.

Notes—Clause 45 should be read with clauses 32, 33 and 34 Section 36 (1) of the English Act seems to confine the application of the principle contained in it to dealing with a firm after a change in its constitution nevertheless it is accepted law in England that after the dissolution of a firm persons dealing with its partners are entitled to assume that they continue to be each other's agents until notice is given of the dissolution There is indeed no reason to differentiate, in this matter of the presumed continuance of mutual agency between the case where a partner leaves the firm and the case where the firm is dissolved

The proviso reproduces sub section (3) of section 36 of the English Act —*Notes on Clauses* Old customers of a firm, who deal wit
ship are entitled to treat the former apparent part
they have actual notice of the change *Halsbury*
3 S L R 140, 68 Ind Cas 932, 115 Ind Cas
firm is dissolved and no notice is given and peopl
under the firm's name they are not to be affected
right to sue the retiring partner upon past dissolution transactions does not depend on the question whether they know that he was a partner prior to dissolution 35 C W N 705, see also 30 C W N 11=91 Ind Cas 824, 92 Ind Cas 653=50 M L J 67, 93 Ind Cas 448, 100 Ind Cas 389=A I R 1927 Sind 155; 129 Ind Cas 588, 125 Ind Cas 442=A I R 1930 Bom 236, 121 Ind Cas 865=A I R 1930 Sind 83, 106 Ind Cas 904=1927 M W N 440 So far as the old partners
lished in the Local Gazette is not *per se*
, *Gorham* v *Thompson* Peake 60; *Re*
17 Mad 667=104 Ind Cas. 120; 74 Ind.
be given specific notice and for others

reasonable public notice is sufficient 93 Ind Cas 448=A I R 1926 Sind 90 35

Rooth v *Quins*, 7 Price 193 In some cases decided under s 264 of the Contract Act it was held that the retiring partner was not bound to give notice of any kind to a new partner who was unaware at the time of transaction that the retiring partner was a partner of the firm A I R 1930 Bom 407 The old section was held not to apply to cases of dormant partners nor to cases of death 100 Ind Cas 520, 5 Bom L R 366 As to liability of a retiring partner giving no notice, *Vide* 3 Bom L R 484 97 Ind Cas 653, 93 Ind Cas 448

Right of partners to have business wound up after dissolution

46 On the dissolution of a firm every partner or his respresentative is entitled, as against all the other partners or their representatives to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights

Notes—Clause 46 is section 39 of the English Act, less the last thirty words which seem unnecessary It affirms the right of partners or their representatives to a share of the net assets of the firm after the dissolution of the firm Subject to any ... have the assets sold to provide a ... ment of the rights of the partners ... , see also *Wild* v *Milne* 26 Beav ... *Bardon* v *Barkens*, 3 Giff 412,

Continuing authority of partners for purposes of winding up

47 After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent, but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent

Notes—Clause 47 follows section 38 of the English Act —

"Where the partnership business is in one sense at an end, still you have not ... They must necessarily be carried on ... every thing belonging to it *Cruik ... sway* v *Collins* 15 Ves 218, *Boote* ... 465 *Wood* v *Braddik* Taunt 104 ... 105, *Halsbury* Vol XXII p 98

Mode of settlement of accounts between partners

48 In settling the accounts of a firm after dissolution, the following rules shall subject to agreement by the partners be observed —

(*a*) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits,

(*b*) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order,—

(*i*) in paying the debts of the firm to third parties,

(*ii*) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital,

(*iii*) in paying to each partner rateably what is due to him on account of capital, and

(*iv*) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits

Notes—This is the "accounting" clause and is most important It is copied with only very slight verbal alterations, from section 44 of the English Act and requires little explanation That section has stood with success the incessant and vigilant scrutiny of lawyers, accountants and business men in England for nearly forty years and may safely be followed—*Notes on Clauses*

Payment of firm debts and of separate debts

49 Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the sh[illegible] his separate debts or paid to h[illegible] applied first in the payment [illegible] the payment of the debts of the firm

Notes—Clause 49 reproduces section 262 of the Indian Contract Act

Although partnership property has annexed to it a permanent liability for partnership debts, yet there is nothing in law which prevents partner from disposing of it as they like or allowing it [illegible] and obliges them to preserve it a[illegible] creditors of the partnersh p 54 I[illegible] of *bona fide* purchaser from surviving[illegible] 393 After dissolution the relationship between surviving and former partner is fiduciary *Ibid* Surviving partner is entitled to dispose of property in connection with winding up 126 Ind Cas 97

Personal profits earned after dissolution

50 Subject to contract between partners, the provisions of clause (*a*) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up.

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name

Notes—Clause 50 is sub section (2) of section 29 of the English Act with necessary verbal changes

Return of premium on premature dissolution

51 Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

(*a*) the dissolution is mainly due to his own misconduct, or

(*b*) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it

Notes—Clause 51 and 52 are sections 40 and 41 of the English Act with a few verbal changes "The principle upon which the Court interferes is that the consideration in respect of which the money is paid, fails and is not obtained by the person who pays the money in consequence of an unforeseen interruption" *Per Stuart V C* in *Freeland* v *Stansfield* 2 Sur & G 479, see also *Tattersall* v *Groote*, 2 Bros & P 131; *Bullock* v *Robinson*, 29 Ch D 170, *Halsbury*, Vol XXII, P. 94

Rights where partnership contract is rescinded for fraud or misrepresentation

52 Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is without prejudice to any other right, entitled—

(*a*) to a lien on, or a right of retention of, the surplus of the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him,

(*b*) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm, and

(*c*) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm

Notes—The law was the same previous to the passing of the English Partnership Act (53 and 54 Vict c 39) s 41, *Vide Maycock* v *Beatson*, 13 Ch D 384, *Adam* v *Newbegging*, 13 App Cas 308

Right to restrain from use of firm name or firm property

53 After a firm is dissolved, every partner or his representative may in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit until the affairs of the firm have been completely wound up

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name

Notes—Section 53 is complementary to clause 50 The earlier clause does not prevent a partner from using the firm connection, or property or his private ends during the winding up, but requires him to account for the profits he obtains thereby The present clause gives a power to the other partners or their representatives to prevent any partner absolutely from using the firm name or property until the winding up is completed—*Notes on Clauses*

Agreement in restraint of trade

54 Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits, and notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable

Sale of goodwill after dissolution.

55 (1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm

Rights of buyer and seller of goodwill.

(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(*a*) use the firm name,

(*b*) represent himself as carrying on the business of the firm, or

(*c*) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreements in restraint of trade.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local

limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872, such agreement shall be valid if the restrictions imposed are reasonable

Notes—Clause 54 does not profess to be an exhaustive codification of all the judicial rulings on the difficult subject of goodwill It includes only the outstanding rules, and does not introduce the various refined modifications and qualifications disclosed by a study of the English case law appertaining thereto The clause introduces a subject which so far has not found its way into the Indian Statute-book, and only to a very small extent into the law reports; and it seems advisable, to begin with to state only the broadest rules and to find out by experience how far they require modification and qualification to suit Indian conditions

The term "goodwill" has been defined in various ways but never quite successfully, and it is not proposed to make the attempt here It is sufficient that there is ... a healthy business which is known to ... , and the Bill uses this well known term ... the consequences which ordinarily follow ... discussion of goodwill is given by Lindley on pages 536 to 547.

... property of the ... int of view, and ... ier part of the ... her along with ... as part of the ... e further step, requiring little justification, but it is in accordance with English law as given in *Jennings* v *Jennings* [(1898) 1 Ch 378 at page 389], *Hill* v *Fearis*, [(1905) 1 Ch 466] *In re David and Mathews* [(1899) 1 Ch 378] and other cases

Sub-clause (2) begins with an important proposition defining the rights which are ordinarily retained by the seller of a goodwill Inspite of the sale of the goodwill of a firm any partner may set up a competing bus ... the firm, and may even advertise the business—*Ke* ... *him* v *Pollaze*, (8 Ch 91) This is in accordance ... a man may trade as he chooses, in fair competition ... obtain a higher value for his goodwill by restricting this right, he must make a special bargain [*see* sub clause (3)] Things which he may not do are given in (*a*), (*b*) and (*c*) of the sub clause

(*a*) he may not use the firm name—*Churton* v *Douglas*, (Johns, 174);
(*b*) he may not represent himself as succeeding to the business of the firm (*Ibid*),
(*c*) he may not solicit old customers of the firm—*Trego* v *Hunt*, (1896) A C 7].

These propositions are fairly simple and follow naturally from the sale of the goodwill of the business, for, though ...

... y of these In particular it does not include the proposition that where a partner has been adjudicated insolvent, he is not prevented from soliciting the old customers of the firm This is based on *Cruttwell* v *Lye*, (17 Ves 335) and *Walker* v *Mottram*, (19 Ch D 355), which are derived from the general consideration that the insolvent's share in the assets of the firm ... benefit of his creditors, and he ... therefore, be bound by a condi...

... of assignment for the ... cases the sale usually ... and the seller derives ... and elaborate the new statutory rules to this extent In any case, these matters are expressed to be subject to agreement by the buyer and the partner concerned and, where there is no

agreement, any loss to the seller arising from the absence of these refinements which are all in favour of the seller, will be balanced by the enhanced value of the goodwill

Sub clause (3), as with sub clause (2) of clause 36, is a modification of the general rule that each partner may carry on a business competing with that of which the goodwill has been sold, and is derived from explanation 1 to section 27 of the Indian Contract Act, 1872

CHAPTER VII

Registration of Firms

Power to exempt from application of this Chapter

56 The Governor General in Council may, by notification in the *Gazette of India*, direct that the provisions of this Chapter shall not apply to any province or to any part thereof specified in the notification

Appointment of Registrars

57. (1) The Local Government may appoint Registrars of Firms for the purposes of this Act and may define the areas within which they shall exercise their powers and perform their duties

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code *

Notes—Section 55 gives power to the Governor General in Council to exempt *from the provisions of this Chapter any undeveloped area to which its provisions may* not be suited

Application for registration

58 The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form, and accompanied by the prescribed fee, stating—

(*a*) the firm name,

(*b*) the place or principal place of business of the firm,

(*c*) the names of any other places where the firm carries on business,

(*d*) the date when each partner joined the firm

(*e*) the names in full and permanent addresses of the partners, and

(*f*) the duration of the firm

The statement shall be signed by all the partners or, by their agents specially authorised in this behalf

(2) Each person signing the statement shall also verify it in the manner prescribed

(3) A firm name shall not contain any of the following words, namely —

"Crown" "Emperor" "Empress," "Empire" 'Imperial,' 'King," [illegible] ing the sanction approval or [illegible] dia or a Local Government, [illegible] nifies his consent to the use [illegible] writing under the hand of one of the Secretaries of the Government of India

Notes—Section 57, sub clause (1) is based on section 3 of the Registration of Business Names Act, 1916 (6 & 7 George V c 58) but it reduces the particulars to be furnished to the minimum required for the information and benefit of third parties Nothing of the internal economy of the firm need be disclosed beyond the mere names of the partners and the duration of their partnership

Sub-clause (3) is taken from sub-section (3) of section 11 of the Indian Companies Act, 1913

Report of the Select Committee—Under the original draft of sub clause (1), the validity of the registration of a firm could be disputed on the ground that its principal place of business does not lie within the area in which it has

* XIV of 1860

been registered To avoid this we propose that registration may be effected in any area in which the firm carries on business

'At the end of sub clause (1) we have inserted words which will allow partners residing at a distance to give special authority to agents to sign on their behalf applications for registration This amendment will cover the signing of statements under clause 59 —*Report of the Select Committee*

59 When the Registrar is satisfied that the provision of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

Registration

Notes—In connection with this clause and with the succeeding clauses two points should be noted —

(1) The Registrar is a mere recording officer and the entries he makes in the register will contain only the facts, or alleged facts of which he is given notice So long as any statement or notice is formally correct he has no discretion but to record them in the Register of Firms

(2) In addition to making the necessary entries in the Register of Firms he is required to file the original of every document submitted to him The original statement and all subsequent statements and notices will be filed together, so that all original papers relating to any firm will be conveniently found together in one file —*Notes on Clauses*

60 (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under section 58.

Recording of alterations in firm name and principal place of business

(2) When the Registrar is satisfied that the provisions of sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement and shall file it along with the statement relating to the firm filed under section 59

Notes—Section 60 relates to the recording of alteration in the firm name and the principal place of business of the firm and it requires the same degree of formality as is required for the original statement under clause 58

61 When a registered firm discontinues business at any place or begins to carry on business at any place such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms and shall file the intimation along with the s atement relating to the firm filed under section 60

Noting of closing and opening of branches

Notes—Section 60 relates to the noting in the Register of the closing and opening of branches This is a less important matter and the clause permits of the notice being sent by any partner

62 When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61

Noting of changes in names and addresses of partners

Notes—Section 62 relates to the noting of changes in the names and addresses of partners which is likewise performed in a less formal manner

63 (1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any [illegible] before the [illegible] dissolution or the agent of any [illegible] thorised in this behalf may give notice to [illegible]

Recording of changes in and dissolution of a firm

specifying the date thereof, and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59

Recording of withdrawal of a minor

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub section (1)

Notes —Sub clause (1) should be read with clauses 32, 33, 45 and 71 These are important matters but as the law of partnership allows notice to customers to be given by any partner, this clause gives the same right, and does not require these important matters to be notified by all the partners acting together

Sub clause (2) should be read with clauses 30 and 71

Rectification of mistakes

64 (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Registrar of Firms

Notes —Section 64 confers on the Registrar a power to correct clerical errors whether made by himself or by the persons sending him statements or notices

Amendment of register by order of Court

65 A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision, and the Registrar shall amend the entry accordingly

Notes —It has been mentioned under section 59 that the Registrar is a mere recording officer He will have no power to enter into the accuracy of the statements contained in any document sent to him Section 65 gives to the civil Courts the necessary power of correction in cases of disputes —*Notes on Clauses*

Inspection of Registrar and filed documents

66 (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed

[illegible] this Chapter shall be [illegible] ment of such fee as

Notes —Sub clause (1) makes the register open to inspection by any person on application and on payment of a fee

Sub clause (2) makes the original documents filed by the Registrar open to inspection, but subject to such conditions as may be prescribed by rules It is deemed inadvisable to allow untrammelled inspection by any member of the public of these important documents The rules will probably require inspection to be carried out under some kind of supervision, and will require the person applying for inspection to show that he is in some way interested in the contents of the original document, and that inspection of the register itself is not sufficient for his purposes—*Notes on Clauses*

Grant of copies

67. The Registrar shall on application furnish to any person on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms

Notes—Section 67 gives an unrestricted right to any member of the public to obtain a certified copy of an entry in the register, on payment of the prescribed fee This right does not extend to the original documents

Rules of evidence

68. (1) Any statement, intimation of notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein

Notes—Section 68 makes the original documents filed with the Registrar conclusive evidence of the facts contained therein, as against any person who has signed them It also makes certified copies of entries in the register evidence of registration and of the contents of the originals

Effect of non registration

69 (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a

or to have been a partner in

son suing is or has been shown

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm

(3) The provisions of sub sections (1) and (2) shall apply also to a claim of set off or other proceeding to enforce a right arising from a contract, but shall not affect—

(*a*) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm, or

(*b*) the powers of an official assignee, receiver or Court under the Presidency Towns Insolvency Act, 1909,* or the Provincial Insolvency Act 1920,† to realise the property of an insolvent partner

(4) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in British India, or whose places of business in British India, are situated in areas to which, by notification under section 56‡ this Chapter does not apply, or

(*b*) to any suit or claim of set off not exceeding one hundred rupees in value which, in the [illegible]

of the Presidency S

towns is not of a ki

Cause Courts Act, 1

incidental to or arising from any such suit or claim

Section 69—This important clause provides the pressure which is to be brought to bear on partners to have the firm and themselves registered Its force has already been discussed in paragraph 19 to 29 of our Report. As regards operation of this section *vide* 39 C W N 67

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* II of 1909 † V of 1920

‡ Substituted by Act 24 of 1934 § XV of 1882 ‖ IX of 1887

Penalty for furnishing false particulars

70. Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall, be punishable with imprisonment which may extend to three months, or with fine, or with both

Notes—Section 70 imposes a penalty for making a false declaration in any document sent to the Registrar

Power to make rules

71 (1) The Governor General in Council may make rules prescribing the fees which shall accompany document sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms

Provided that such fees shall not exceed the maximum fees specified in Schedule I

(2) The Local Government may make rules—

(a) prescribing the form of statement submitted under section 58, and of the verification thereof ;

(b) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof,

(c) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein ;

(d) regulating the procedure of the Registrar when disputes arise ;

(e) regulating the filing of documents received by the Registrar

(f) prescribing conditions for the inspection of original documents,

(g)

(h)

(i) to the Register of Firms ; and

this Chapter be subject to the condition of

Notes—Section 71 gives power to the Local Government to make rules to supplement the provisions of the Chapter The only point which calls for special comment is clause (j) whereunder rules may be made providing for the maintenance and form of an index to the Register of Firms These rules will have to be carefully drafted so that the index will be a real convenience to members of the public and will enable them to trace without delay or trouble the existence of any partnership

The rules are to be subject to the condition of previous publication

CHAPTER VIII

SUPPLEMENTAL

Mode of giving public notice

72 A public notice under this Act is given—

(a) where it relates to the retirement or expulsion of a partner from a registered firm or to the dissolution of a registered firm or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership by notice to the Registrar of Firms under section 63, and by publication in the local official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and

(*b*) in any other case, by publication in the local official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business

Notes —Section 72 should be read with sections 30, 32 33 45 and 63

Repeals

73 The enactments mentioned in Schedule II are hereby repealed to the extent specified in the fourth column thereof

Notes [illegible] wns and the scheme of [illegible] peal of this Act however [illegible] Government of Burma to consult local opinion

Savings

74 Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act or

(*c*) anything done or suffered before the commencement of this Act, or

(*d*) any enactment relating to partnership not expressly repealed by this Act, or

(*e*) any rule of insolvency relating to partnership, or

(*f*) any rule of law not inconsistent with this Act

Notes —Section 74 is a formal clause intended to have existing rules of law not specifically affected —*Notes on Clauses*

SCHEDULE I

MAXIMUM FEES

[*See* sub section (1) of section 71]

Document or act in respect of which the fee is payable	Maximum fee
Statement under section 58	Three rupees
Statement under section 60	One rupee
Intimation under section 61	One rupee
[illegible]	One rupee
[illegible]	One rupee
[illegible]	One rupee
[illegible]	Eight annas for inspecting one volume of the Register
Inspection of documents relating to a firm under sub section (2) of section 66	Eight annas for the inspection of all documents relating to one firm
Copies from the Register of Firms	Four annas for each hundred words or part thereof

SCHEDULE II

ENACTMENTS REPEALED

(*See* section 73)

Year	No	Short title	Extent of repeal
1	2	3	4
1872	IX	The Indian Contract Act, 1872	Exceptions 2 & 3 to section 27. The whole of Chapter XI
1920	Burma Act VIII	The Burma Registration of Business Names Act, 1920	The whole

THE INDIAN PATENTS AND DESIGNS ACT, 1911.

ACT NO. II OF 1911.

RECEIVED THE GOVERNOR GENERAL'S ASSENT ON 1ST MARCH, 1911

An Act to amend the law relating to the Protections of Inventions and Designs

WHEREAS it is expedient to amend the law relating to the protection or

1923 All 17

PRELIMINARY

Short title, extent and commencement

(1) This Act may be called the Indian Patents and Designs Act, 1911.

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas, and

(3) It shall come into force on the first day of January, 1912

Notes—A person obtained the exclusive privilege in respect of an invention

office established there and in an action for infringement of patent it was contended

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Advocate-General" includes a Government Advocate :

(2) "article" means (as respects designs) any article of manufacture and any substance, artifical or natural, or partly artificial and partly natural :

(3) "Controller' means the Controller of Patents and Designs appointed under this Act

(4) "copyright ' means the exclusive right to apply a design to any article in any class in which the design is registered

'(5) "design' means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in section 478 or property mark as defined in section 479 of the Indian Penal Code* " †

(6) 'District Court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908 ‡

(7) 'High Court' has the meaning assigned to that expression by the Code of Criminal Procedure, 1898, in reference to proceedings against European British subjects

(8) "Invention' means any manner of new manufacture, and includes an improvement and an alleged invention

(9) "legal representative' means a person who, in law represents the estate of a deceased person

(10) 'manufacture' includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture

(11) 'patent" means a patent granted under the provisions of this Act

(12) "patentee' means the person for the time being entered on the register of patents kept under this Act as the grantee or proprietor of the patent' §

(13) 'prescribed includes prescribed by rules under this Act and

(14) "proprietor of a new or original † design,' –

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed, and

(b) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise,—means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired ; and

(c) in any other case, means the author of the design,

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person

Clause 2 (3)—*Vide* 54 Ind Cas 417

Clause 2 (5)—*Vide* 25 Ind Cas 998

Clause 2 (8)—*Vide* 17A 49, 36 Bom L R 881

Clause 2 (9)—*Vide* 8 C W N 843

Clause 2 (10)—*Vide* 23 C 702

Clause 2 (12)—Where in an action for infringement of patent it is found that the patent contains both subject matter and utility the Courts should approach the case with the desire to uphold the [illegible]

Clause—2 (14) *Vide* 1934 A L J 664

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* Act XLV of 1860

† Substituted by Act VII of 1930

‡ Act V of 1908

§ Act V of 1898

PART I

PATENTS

Application for and Grant of Patent

Application

3 (1) An application for a patent may be made by any person, whether he is a British subject or not, and whether alone or jointly with any other person

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one at least of the applicants claims to be the true and first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent, and must be accompanied by a specification and by the prescribed fee

(4) Where the true and first inventor is not a party to the application, the application must contain a statement of his name and such particulars for his identification as may be prescribed, and the applicant must show that he is the legal representative or assign of such inventor.

Notes—This section corresponds to section 1 of the English Patents and Designs Act 7 *Edw VII, Chapter 29* In case of joint application it must be stated which of the applicants is or are the true and first inventor or inventors *Halsbury*, Vol 22, p 153 A patent cannot be granted where the true and first inventor refuses the grant *Hool* v *Riches*, (1902) 19 R P C 127, *Re C & C's Application*, (1910) 21 R P C 454

Specification

4 (1) The specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed

(2) Where the Controller deems it desirable, he may require that suitable drawings shall be supplied with specification or at any time before the acceptance of the application, and such drawings shall be deemed to form part of the specification

(3) The specification must commence with the title, and must end with a distinct statement of the invention claimed

(4) If in any particular case the Controller considers that an application should be further [illegible] thing illustrating the invention or [illegible] model or sample as he may require [illegible] the application, but such model [illegible] orm part of the specification

Notes—*This section corresponds to section 2* of the English Patents and Designs Act, 1907 7 Edw VII, Chap 29 The title mentioned in clause (3) is really a short statement of the invention *Househill Coal and Iron Co* v *Nelson* (1893) 1 Web Pat Cas 673=9 Cl & Fin 788 H L. The title should give a fair general description of the nature of the invention This obviously connotes that within certain limits it must not be too wide For instance, with regard to an invention consisting of an improved lamp a title "for an improved method of lighting cities towns and villages was held to be too vague *Halsbury*, Vol 22, p 155 citing *Cochrane* v *Smethurst*, 1 Stark 205 *Campion* v *Benyon*, (1821) 6 Moore P C 71, *Felton* v *Greaves*, (1829) 3 C & P 611, *Derosne* v *Fairie*, (1835) 2 Cr M & R 476; *Cook* v *Pearce*, (1893) 8 Q B 1044, *Hickels* v *Haslam* (1844) 7 Mac & G 378

Proceedings upon application

5 (1) The Controller shall examine every application, and if he considers that—

(*a*) the nature of the invention is not fairly described, or

(*b*) the application, specification, and drawing have not been prepared in the prescribed manner or

(c) the title does not sufficiently indicate the subject matter of the invention, or

(d) the statement of claim does not sufficiently define the invention or

(e) the invention, as described and claimed, is *prima facie* not a new manufacture or improvement, or

(f) "the specification relates to more than one invention" *

he may refuse to accept the application or require that the application, specification or drawings be amended before he proceeds with the application and, in the latter case the application shall, if the Controller so directs, bear the date as from the time when the requirement is complied with

"Provided that, when a specification comprises more than one invention, the application shall, if the Controller or the applicant so requires be restricted to one invention and the other inventions may be made the subject matter of ... be proceeded with as ... discretion direct that ... the original application ... latter date as he may ... purposes of this Act, to have been made on the date which it bears in accordance with such direction "*

(2) Where the Controller refuses to accept any application or requires an amendment, the applicant may appeal from his decision to the Governor General in Council

(3) The investigations required by this section shall not be held in any way to guarantee the validity of any patent and no liability shall be incurred by the Governor General in Council or any Officer by reason of, or in connection ... proceeding consequent thereon

... cepted whithin twelve months from the date ... shall (except where an appeal has been ...

... within three months after the expiration of the said period of twelve months, a request is made to the Controller for an extension of time by any period not exceeding three months the application shall on payment of the prescribed fee, be continued or revived, as the case may be during, but not beyond the period of extension so requested "†

Notes — This section corresponds to section 3 of the English Patents and Designs Act, 1907 A fair description of the invention must be given When it is ... es ... len ... ing ... 58 ... Eq

496 503 N

Advertisement on acceptance of application

6 On the acceptance of an application the Controller shall ... thereof to the ... acceptance, ... tion with the ... public inspection

Notes — On the acceptance of a provisional or complete specification the Controller gives notice thereof to the applicant *Halsbury*, Vol 22, p 174

Use of invention on acceptance of application

7 Where an application for a patent in respect of an invention has been accepted any use or publication of the invention during the period between the date of application and the date of sealing such patent shall not prejudice the patent to be granted for the invention

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* The words within quotations have been added by Act 7 of 1930

† Substituted by Act VII of 1930

it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention

Notes —This section corresponds to section 14 of the English Patents and Designs Act, 1907

Fraudulent applications for patents

13 (1) A patent granted to the true and first inventor or his legal representative or assign shall not be invalidated by an application in fraud of him, or by protection obtained thereon or by any use or publication of the invention subsequent to that fraudulent application during the period of protection

"(2) Where a patent has been revoked by the High Court on the ground that it has been obtained in fraud of the true and first inventor, or where the grant of a patent has been refused by the Controller under section 9 on the ground stated in clause (a) of sub section ( ) of that section, the Controller may, on the application of the true inventor or his legal representative or assignee made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention and the patent so granted shall bear the same date as the patent so revoked or, in the case of a patent the grant of which has been refused the same date as would have been borne by the patent if it had been granted

Provided that no suit shall be brought for any infringement of the patent so granted committed, before the actual date when such patent was granted "*

Notes —A patent granted to the true and first inventor cannot be invalidated by an application in fraud of him or by provisional protection obtained thereon *Halsbury*, Vol 22, p 179

Term of Patent

Term of Patent

14 (1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act be "sixteen "* years from its date.

"† (*1A*) Any patent the original term of which had not expired on or before the 1st day of July, 1930 shall have effect as if the term mentioned therein was sixteen years instead of fourteen years and any license existing at that date which has been granted for the term of the patent shall be treated as having been granted for the term as so extended if the licensee so desires

"†(*1B*) Where any party to a contract with the patentee or any other person entered into before the 1st day of January 1930 is subjected to loss or liability by reason of the extension of the term of any patent under this section, any District Court having jurisdiction may determine in what manner and by which parties such loss or liability shall be borne "

(2) A patent shall, [illegible]
the patentee fails to pay [illegible]
' Provided that wher[illegible]
expiration of the time for payment, applies to the Controller for an extension of time by any period not exceeding three months the patent shall on payment of such additional fee as may be pres[illegible] case may be, during but not beyond the [illegible]

(3) If any proceeding is taken [illegible] patent committed after a failure to pay any fee within the [illegible] any enlargement thereof the Court before [illegible] if it thinks fit, refuse to award any damages

Notes —This section corresponds to section 17 of the English Patents and Designs Act, 1907

* Substituted by Act VII of 1930 † Inserted by Act VII of 1930

Extension of term of patent

15 (1) A patentee may,* present a petition to the Governor General in Council praying that his patent may be extended for a further term, but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent, and must be accompanied by the prescribed fee, "and must be advertised by the patentee within the prescribed time and in the prescribed manner†"

(2) Any person may "within such time as may be prescribed and on payment of the prescribed fee,"† give notice to the Controller of objection to the extension

(3) Where a petition is presented under sub-section (1), the Governor General in Council may, as he thinks fit, dispose of the petition himself or refer it to a High Court for decision

(4) If the petition be referred to a High Court then on the hearing of such petition under this section, the patentee, and any person who has given notice under [illegible] ...n, shall be made parties to the proceeding, and ... to appear and be heard

... petition is referred shall, in considering its decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case

(6) If [illegible] ...r General in Council, or to the High Court ... to it, that the patentee has been made ... the Governor General in Council or the ... by order extend the term of the patent for a further term not exceeding "five"‡ or in exceptional cases "ten"‡ years, or may order the grant of a new patent for such term as may be specified in the order and subject to the payment of such fees as may be prescribed, and containing any restriction, conditions and provisions which the Governor General in Council or the High Court as the case may be may think fit:

Provided that any patent so extended or granted shall, notwithstanding anything therein or in this Act cease if the inventor fails to pay before the expiration of each year the prescribed fee

Notes—This section corresponds to section 18 of the English Patents and Designs Act 1907 Under this section the petitioner may be the administratrix of the patentee *Re Downton's Patent*, (1839) 1 Web Pat Cas 565 P C, *Re Heath's Patent* (1853) 8 Moo P C C 217 He may be his executor or assignee *Re Bodner's Patent* (1849) 6 Moo P C C 4 8 *Re Davies's Patent*, (1893) 11 R. P C 27 P C, *Re Morgan's Patent* (1843) 1 Web Pat Cas 737 P C

Patents of addition

"**15A** (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired and if he does so a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid

(2) Save as otherwise expressly provided by this Act a patent of addition shall remain in force as long as the patent for the original invention remains in force, but no longer and in respect of a patent of addition no fees shall be payable for renewal:

Provided that if the patent for the original invention is revoked, then the patent of addition shall, if the authority by which it is revoked so orders become an independent patent and the fees payable, and the dates when they

* Certain words after this omitted by Act 7 of 1930

† Inserted by Act 7 of 1930

‡ Substituted by Act 7 of 1930

become payable, shall be determined by its date, but its duration shall not exceed th unexpired term of the patent for the original invention

(3) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent'

Notes—This amendment introduces a new provision which will enable a patentee to add to his original patent improvements hav ng the same term as the original patent without incurring the expense involved in taking out separate patents—*Notes on Clauses*

Restoration of lapsed patent

16 (1) Where any patent has ceased owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Controller in the prescribed manner for an order for the restoration of the patent

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Controller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office

(4) Where such notice is given the Controller shall notify the applicant thereof

(5) After the expiration of the prescribed period the Controller shall hear the case and, subject to an appeal to the Governor General in Council, issue an order either restoring the patent subject to any conditions "and restrictions" * deemed to be advisable or dismissing the application

Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject matter of the patent after the patent had ceased

Notes—This section corresponds to section 20 of the English Patents and Designs Act, 1907

Amendment of Application or Specification

Amendment of application or specification by Controller

17 (1) An applicant or a patentee may at any time, by request in writing left at the Patent Office, and accompanied by the prescribed fee seek leave to amend his application or specification, including drawings forming part thereof by way of disclaimer, correction, or explanation stating the nature of and the reasons, for the proposed amendment

(2) If the application for a patent has not been accepted the Controller shall determine whether and subject to what conditions (if any) the amendment shall be allowed

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within three mo ths from its first advertisement any person may give notice at the Patent Office of opposition to the amendment

( ) Where such a notice is given, the Controller shall give notice of the

the case

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* The words within quotations have been inserted by Act 17 of 1914

(7) No amendment shall be allowed that would make the application or specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the application or specification as it stood before amendment

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all Courts and for all purposes, be deemed to form part of the application or specification

(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending

Notes—This section corresponds to section 21 of the English Patents and Designs Act, 1907

Clause (1)—A disclaimer strikes out what has been disclaimed; it cannot be read to explain the remainder of the specification *Halsbury* Vol 22, citing *Telly* v *Easton*, (1857) 2 C B N 706; *Ralston* v *Smith*, (1865) 11 H L Cas 223, *Re Ryland's Patent*, (1888) 5 R P C 665 A disclaimer operates from the date of the patent *R* v *Mill*, (1851) 14 Beav 312, *Re Lucas' Disclaimer*, (1854) Macr. 235 The function of an explanation is to explain more clearly the meaning of the patentee at the time he patented the invention *Re Ashworth's Patent*, (1886) Griffin Patent cases 1888, 6 Subsequently gained knowledge cannot be included *Re Beck and Justice's Patent*, (1886) Griffin, Patent Cases 1888 10 An applicant for amendment of specification must show that his amendment falls within one of three categories of disclaimer 1932 A C 709=139 Ind Cas 657=A I R 1932 P C 266 (P C) The power of Controller under this section is absolute 61 C 450=38 C W N 729

Clause (9)— Suit does not include appeal 61 C 458=38 C W N. 729

18 In any suit for infringement of a patent or proceeding before a Court for the revocation of a patent, the Court may by order, allow the patentee to amend his specification by way of disclaimer "correction or explanation"* in such manner and subject to such terms as to cost advertisement, or otherwise, as the Court may think fit

Amendment of specification by the Court

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the Court, notice of the application shall be given to the Controller and the Controller shall have the right to appear and be heard

Notes—This section corresponds to section 22 of the English Patents and Designs Act, 1907 Here the word 'p ment *Cropper* v *Smith*, (1885) 1 R P (1885) 2 R P C 179 The Court may by way of disclaimer in such manner 715, *Re Klaber and Steinberg's Patent* W N 729

19 Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any suit in respect of the use of the invention "before the date of the decision allowing the amendment"† unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge

Restriction on recovery of damages

Notes—This section corresponds to section 23 of the Patents and Designs Act, 1907

* Inserted by Act 7 of 1930

† Substituted by Act 7 of 1930

Register of Patents

20 (1) There shall be kept at the Patent Office a book called the Register of Patents wherein shall be entered the names and addresses of grantees of patents notifications of assignments and of transmissions of patents of licenses under patents and of amendments extensions and revocations of patents and such other matters affecting the validity or proprietorship of patents as may be prescribed

Register of Patents

(2) The register of inventions and Address book existing at the commencement of this Act shall be incorporated with, and form part of, the register of patents under this Act

(3) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein

(4) Copies of deeds licenses and any other documents affecting the proprietorship in any patent or in any license thereunder must be supplied to the Controller in the prescribed manner for filing in the Patent Office *

Notes—This section corresponds to section 28 of the English Patents and Designs Act, 1907

Crown

† "**21** (1) Subject to the other provisions of this section, a patent shall have to all intents the like effect as against His Majesty the King as it has against a subject

Patent to bind Crown

(2) The officers or authorities administering any department of the service of His Majesty may by themselves or by such of their agents, contractors or others as may be authorised in writing by them at any time after the application, and after giving notice to the applicant or patentee make, use or exercise the invention for the service of the Crown on such terms as may either before or after the use thereof be agreed on with the approval of the Governor General in Council between such officers or authorities as the applicant or patentee or, in default of any agreement, as may be settled in the manner hereinafter provided And the terms of any agreement or license concluded between the applicant or patentee and any person other than such officers or authorities shall be inoperative so far as concerns the making use or exercise of the invention for the service of the Crown

(3) Where an invention which is the subject of any patent has before the date of the patent been duly recorded in a document by or tried by or on behalf of the officers or authorities administering any department of the service of His Majesty (such invention not having been communicated directly or indirectly by the applicant or patentee) such officers or authorities or such of their agents contractors or others as may be authorised in writing by them, may after giving notice to the applicant or patentee make use or exercise the invention so recorded or tried for the service of the Crown free of any royalty or other payment to the applicant or patentee notwithstanding the existence of the patent. If in the opinion of such officers or authorities the disclosure … document recording the … would be detrimental … to counsel on behalf of the applicant or patentee or to any independent expert mutually agreed upon

(4) In the event of any dispute as to the making, use or exercise of an invention under this section or the terms therefor or as to the existence or scope of any record or trial as aforesaid, the matter shall be referred to the High Court for decision who shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official referee or an arbitrator upon such terms as it may direct The Court, referee or arbitrator, as the case may be may with the consent of the parties,

* Certain words after this repealed by Act VII of 1930 have been omitted
† Substituted by Act 7 of 1930

take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant or patentee and such officers or authorities The Court referee or arbitrator, further in settlin the terms as aforesaid shall be entitled to take into consideration any benefit or compensation which the applicant or patentee, or any other person interested in the patent, may have received directly or indirectly from the Crown or from such officers or authorities in respect of such patent

Provided that, if the inventor or patentee is a Government servent and the subject matter of the invention is certified by the Governor General in Council or Local Government to be connected with work done in the course of such service any such dispute shall be settled by the Governor General in Council after hearing the applicant or patentee and any other person having an interest in the invention or patent

(5) The right to use an invention for the services of the Crown under the provisions of this section or any provisions for which this section is substitut d shall include, and shall be deemed always to have included, the power to sell any articles made in pursuance of such right which are no longer required for the services of the Crown

(6) Nothing in this section shall affect the right of the Crown or of any person deriving title directly or indirectly from the Crown to sell or use any articles forfeited under any law for the time being in force relating to customs or excise

Assignment of patent to the Secretary of State for India in Council

* "21 A (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the Secretary of State for India in Council on behalf of His Majesty all the benefit of the invention and of any patent obtained or to be obtained for the invention , and the Secretary of State for India in Council may be a party to the assignment

(2) The assign [illegible]
patent in the Sect [illegible]
and all convenants [illegible]
secret and otherwis [illegible]
valuable considerat [illegible]
Secretary of State

(3) Where any such assignment has been made, the Governor General in Council may at any time before the publication of the specification certify to the Controller that in the interest of the public service the particulars of the invention and of the manner in which it is to be performed should be kept secret

(4) If the Governor General in Council so certify the application and specifications with the drawings (if any) and any amendment of the specification and any copies of such documents and drawings shall instead of being left in the ordinary manner at the Patent Office, be delivered to the Controller in a packet sealed by authority of the Governor General in Council

(5) The packet shall, until the expiration of the term during which a patent for the invention may be in force be kept sealed by the Controller and shall not be opened save under the authority of an order of the Governor General in Council

(6) [illegible]
of the [illegible]
receive [illegible]

(7) C [illegible]
delivered to the Governor General in Council

(8) Where the Governor General in Council certifies as aforesaid after an application for a patent has been left at the Patent office but before the pub-

* Substituted by Act 7 of 1930

process is manufactured or carried on within British India to an adequate extent ' or

(*b*) ordering the patentee to grant a license to the applicant which may be a license exclusive to him or or otherwise as the Governor General in Council may direct *

(3) No order revoking a patent shall be made under the last sub section which is at variance with any treaty, convention, arrangement or engagement with any foreign country or British possession

(4) The Governor General in [illegible] the [illegible] of the patentee, extend the time limited in any [illegible] for such period not exceeding two [illegible] or revoke any order made under sub section (2), clause (ii), or any subsequent order if sufficient cause is, in his opinion, shown by the patentee

Notes —This section corresponds to section 27 of the English Patents and Designs Act of 1907 Under section 27 of the English Act any person may, at any time not less than four years after the date of a patent apply to the Controller for the revocation of the Patent on ground that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom *Vide Halsbury*, Vol 22 p 208, *Re Hatschek s Patents*, (1909) 2 Ch 68, *Re Bremer s Patent*, (1909) 2 Ch 217, *Re Fiat Motors Ltd* (1911) 2 Ch 66, *Re Green s Application* (1911) 1 Ch 754 Where the patentee proves that he tried his best to establish the industry in this country his patent will not be revoked *Re Bremer's Patent* (1909) 2 Ch 217 Unless a *prima facie* case is made out under sub section (1) the patentee can not be asked to produce his witness *Vide Re Lahl s Patent* (1909) 26 R P C 443, *Re Hatschek s Patents* (1909) 26 R P C 223=(1909) 2 Ch 68 In revoking a patent under this section, the consideration of the public interest should have priority to individual interest *Re Taylor s Patent*, (1912) 1 Ch 635 Mere imitation is no offence unless it is accompanied by infringement of copyright or intention to pass off 146 Ind Cas 1084=1933 Cr C 1473=A I R 1933 Nag 344

*"23A An order of the High Court under section 22 or of the Governor General in Council under section 22 or section 23 directing the grant of any license, shall, without prejudice to any other method of enforcement operate as if it were embodied in a deed granting a license and executed by the patentee and all other necessary parties

Operation of order under section 22 or section 23

Notes — 'The amendments to section 23 (2) necessitate the enlargement of the provision at present contained in section 22 (6) so as to apply also to the grant of licences under section 23 —*Notes on Clauses*

24 A patentee may at any time, by giving notice in the prescribed manner to the Controller, offer to surrender his patent, and the Controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent

Power of Controller to revoke surrendered patent

25 A patent shall be deemed to be revoked if the Governor General in Council declares by notification in the *Gazette of India* the patent or the mode in which it is exercised to be mischievous to be State or generally prejudicial to the public

Revocation of patent on public grounds

Legal Proceedings

26 (1) Revocation of a patent in whole or in part may be obtained on petition to a High Court on all or any of the following grounds, namely —

Petition for revocation of patent.

(*a*) that any invention included in the statement of claim is of no utility,

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* Inserted by Act 7 of 1930

(*b*) that any invention included in the statement of claim was not, at the date of the application for a patent, a new invention within the meaning of this Act ;

(*c*) that the applicant was not the true and first inventor thereof or the assign or legal representative of such inventor thereof ,

(*d*) that the original or any amended application or specification does not fulfil the requirements of this Act ,

(*e*) that the applicant has knowingly or fraudulently included in the application for a patent or in the original or any amended specification as his invention, something which was not new or whereof he was neither the inventor nor the assign nor the legal representative of such inventor ,

(*f*) that the original or any subsequent application relating to the invention, or the original or any amended specification contains a wilful or fraudulent mis statement ,

(*g*) that "the whole or a part"* of the invention or the manner in which "the whole or a part"* is to be made and used as described in the original or any amended specification is not thereby sufficiently described, and that this insufficiency was fraudulent or is injurious to the public

(2) *A petition for revocation of a patent may be presented*—

(*a*) by the Advocate General or any person authorised by him , or

(*b*) by any person alleging—

(i) that the patent was obtained in fraud of his rights or of the rights of any person under or through whom he claims , or

(ii) that he or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee , or

(iii) that he or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within British India, before the date of the patent, anything claimed by the patentee as his invention

(3) The High Court may, irrespective of any provisions of the Code of Civil Procedure, 1908,† in this behalf, require any person, other than the Advocate General or any person authorized by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition

Notes —In Patent law the term 'utility' is not used in the abstract but in a very [illegible]

To be new in the patent sense the novely must show invention 42 C L J 543=92 Ind Cas 1008=53 C 336=A I R 1926 Cal 152 In an application under this section for a patent the most important issues are —

(*a*) Is the petitioner the true and the first inventor of the invention

(*b*) Was the patent granted to the respondent by the order of the Controller of Patents etc , obtained by him in fraud of petitioner s right

The issues in such cases can be sent down for trial to the District Judge of the District in which the invention is made, and he is to proceed in accordance with [illegible]

make all the legitimate use of the invention and to appoint a trustworthy person to act as an *ad interim* receiver (*a*) to receive income (*b*) to keep the usual account of

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* Substituted by Act 7 of 1930 † Act 5 of 1908

process is manufactured or carried on within British India to an adequate extent ' or

(*b*) ordering the patentee to grant a license to the applicant which may be a license exclusive to him or or otherwise as the Governor General in Council may direct *

(3) No order revoking a patent shall be made under the last sub section which is at variance with any treaty convention, arrangement or engagement with any foreign country or British possession

(4 The Governor General in Council may on the application of the patentee extend the time limited in any order ma e under sub section (2) clause (ii), for such period not exceeding two years as he may specify in a subsequent order, or revoke any order made under sub section (2), clause (ii), or any subsequent order if sufficient cause is, in his opinion, shown by the patentee

Notes —This s ction corresponds to section 27 of the English Patents and Designs Act of 1907 Under section 27 of the English Act any person may, at any time not less than four years after the date of a patent apply to the Controller for the revocation of the Patent on ground that the patented article or process is manufactured or carried on excl isively or mainly ou s de the United K ngdom *Vide Halsbury*, Vol 22 p 208 *Re Hatschek s Patents*, (1909) 2 Ch 68, *Re Bremer s Patent*, (1909) 2 Ch 217, *Re Fiat Motors Ltd* (19 1) 2 Ch 66, *Re Green s Application* (1911) 1 Ch 754 Where the patentee proves that he tried his best to establish the [illegible] d *Re Bremer s Patent* (19 9) 2 [illegible] sub section (1) the patentee can [illegible] *Patent* (1909) 26 R P C 443, *Re Hatschek s Patents* (1909) 26 R P C 223=(1909) 2 Ch 68 In revoking a patent [illegible] r or ty to [illegible] o offence [illegible] 146 Ind Cas 1084=1933 Cr C 1473=A I R 1933 Nag 344

*"**23A** An order [illegible] 22 or of the Governor [illegible] section 22 or section [illegible] of any license, shall, without prejudice to any other method of enforcement operate as if it were embodied in a deed granting a license and executed by the patentee and all other necessary parties "

Operation of order u[illegible] section 22 or section 23

Notes —"The amendments to section 23 (2) necessitate the enlargement of the provision at present contained in section 22 (6) so as to apply also to the grant of licences under section 23 —*Notes on Clauses*

24 A patentee may at any time, by giving notice in the prescribed manner to the Controller, offer to surrender his patent, and the Controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent

Power of Controller to revoke surrendered patent

25 A patent shall be deemed to be revoked if the Governor General in Council declares by notification in the *Gazette of India*, the patent or the mode in which it is exercised to be mischievous to be State or generally prejudicial to the publi

Revocation of patent on public grounds

Legal Proceedings

26 (1) Revocation of a patent in whole or in part may be obtained on petition to a High Court on all or any of the following grounds, namely —

Petition for revocation of patent.

(*a*) that any invention included in the statement of claim is of no utility,

* Inserted by Act 7 of 1930

(*b*) that any invention included in the statement of claim was not, at the date of the application for a patent, a new invention within the meaning of this Act;

(*c*) that the applicant was not the true and first inventor thereof or the assign or legal representative of such inventor thereof;

(*d*) that the original or any amended application or specification does not fulfil the requirements of this Act,

(*e*) that the applicant has knowingly or fraudulently included in the application for a patent or in the original or any amended specification, as his invention, something which was not new or whereof he was neither the inventor nor the assign nor the legal representat[illegible]

(*f*) [illegible]
or the orig[illegible]
mis statement,

(*g*) that "the whole or a part"* of the invention or the manner in which "the whole or a part"* is to be made and used, as described in the original or any amended specification is not thereby sufficiently described, and that this insufficiency was fraudulent or is injurious to the public

(2) A petition for revocation of a patent may be presented—

(*a*) by the Advocate-General or any person authorised by him, or

(*b*) by any person alleging—

(i) that the patent was obtained in fraud of his rights or of the rights of any person under or through whom he claims, or

(ii) that he or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee, or

(iii) that he or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within British India, before the date of the patent, anything claimed by the patentee as his invention

(3) The High Court may, irrespective of any provisions of the Code of Civil Procedure, 1908,† in this behalf, require any person, other than the Advocate General or any person authorized by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition

Notes —In Patent law the term "utility" is not used in the abstract but in a very special sense Mere usefulness is not sufficient to support a patent It means an invention better than the preceding knowledge of the trade as to a particular article As re[illegible]

[illegible]

for a patent, the most important issues are —

(*a*) Is the petitioner the true and the first inventor of the invention

(*b*) Was the patent granted to the respondent by the order of the Controller of Patents, etc, obtained by him in fraud of petitioner's right

The issues in s[illegible]ch cases can be [illegible] to the District Judge of the [illegible]

[illegible]

* Substituted by Act 7 of 1930 † Act 5 of

29 Ind Cas 904

27 (1) Notice of any petition for revocation of a patent under section 26 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person

Notice of proceedings to persons interested

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post in a registered letter directed to the person and place for the time being stated in the register

28. (1) A High Court may, if it thinks fit, direct an issue for the trial, before itself or any other High Court or any District Court, of any question arising upon a petition to itself under section 26 and the issue shall be tried accordingly

Framing issue for trial before other Courts

(2) If the issue is directed to another High Court, the finding shall be certified by that Court to the High Court directing the issue.

(3) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded, and a copy thereof, certified by the Judge of the Court, shall be

he may think fit to make thereon, the High Court may thereupon act dispose of the petition upon the evi- justice of the case may require

29. (1) A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person who, during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his licence or counterfeits it, or imitates it

Suits for infringement of patents

30 A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing
obtained for the article stamped, engraved, i
to the article, shall not be deemed to constit
patent unless the word or words are accompanied by the year and number of the patent

Exemption of innocent infringer from liability for damages

Provided that nothing in this section shall affect any proceedings for an injunction

Notes —Innocent infringers of patents can obtain relief from damages The burden of proving innocence is on the infringer as he is *prima facie* liable for damages *Halsbury*, Vol 22, p 223

31. In a suit for infringement of a patent, the Court may, on the application of either party, make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon, as the Court may see fit

Order for inspection, etc., in suit

Notes—This section corresponds to section 34 of the English Patents and Designs Act, 1907 The granting [illegible] Court, *Mc Dougall Brothers* v [illegible] tion by the parties may be order [illegible] *Germmilling Co* v *Robinson*, (1885) 3 R P C 11.

32 In a suit for infringement of a patent, the Court may certify that the validity of the patent came in question, and if the Court so certifies, then in any subsequent suit in that Court for infringement of the same patent, the plaintiff, on obtaining a final order of judgment in his favour, shall, unless the Court trying the suit otherwise directs, have his full costs, charges and expenses of and incidental to the said suit properly incurred

Certificate of validity questioned and costs thereon

Notes—[illegible] be granted where further grounds of objection [illegible] has been [illegible] t will grant [illegible] v *Rogers*, [illegible] v O' *Neill*, [illegible] R P C 10

33 A Court making a decree in a suit under section 29 or an order on a petition under section 26 shall send a copy of the decree or order, as the case may be, to the Controller, who shall cause an entry thereof and reference thereto to be made in the registers of patents

Transmission of decrees and orders to the Controller

34 A High Court to which a petition has been presented under section 26, may stay proceedings on or dismiss the petition if in its opinion the petition would be disposed of more justly or conveniently by another High Court

Power of High Court to stay proceedings etc

35 (1) In a suit or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall on the request of "all"* the parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance

Hearing with assessor

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid

(3) The remuneration, if any, to be paid to an assessor under this section shall in every case be determined by the Court, and be paid by it as part of the expenses of the execution of this Act

"**35A** Notwithstanding anything contained in section 19, if the Court in [illegible] patent finds that [illegible] are valid, it may, subject to its discretion as to costs and as to the date from [illegible] as to amendment as it [illegible] of such claims which are [illegible] claim in the specification [illegible] consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there "†

Grant of relief in respect of particular claims

* Substituted by Act 7 of 1930

† Inserted by Act 7 of 1930

Notes — The amendment provides for the possibility of granting relief in infringement actions in respect of valid claims in spite of the inclusion in the patent of invalid claims The object is to prevent patentees from being penalised for *bona fide* mistakes The amendment follows the provisions of the British Act of 1919'— *Notes on Clauses*

36 Where any person claiming ' to have an interest in a patent * by circulars advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit,

Remedy in case of groundless threats of legal proceedings

threats, and may alleged infringe ringement of ' the patent '*

'Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence"*

Cars v Bland Light Syndicate, confined to threats *ejusdem* letters written in answer to A In order to constitute a *threat the letter should refer specifically to any patent* *Douglass v Pintsch (1897)* 1 Ch 176—*Halsbury* Vol 22 p 227

Miscellaneous

37 Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent be treated for the purpose of the devolution of the legal interest therein as joint tenants, but subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others but shall not be entitled to grant a license without their consent and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives

Grant of patents to two or more persons

Notes —A co owner of a patent may use the patent without the consent of the

Novelty of invention

38 *(1) An invention shall be deemed a* new invention within the meaning of this Act—

(*a*) if it has not before the date of the application for a patent thereon, been publicly used in any part of British India, or been made publicly known in any part of British India, and

(*b*) if the inventor has not by secret or experimental user made direct

(2) The pub[illegible]

application for

within the mea

applies for a patent

* Substituted by Act 7 of 1930

Notes —When the design in question had been in use in the locality from long time before the date when the registration of the patent was applied for by the

new or original the
designs Act A com
was a combination
ntive power or had
section makes dis-
881=A I R 1034
llows a secret user
for a reasonable profit *Ibid*

39. If a patent is lost or destroyed, or its non production is accounted for to the satisfaction of the Controller, the Controller may at any time, on payment of the prescribed fee, seal a duplicate thereof.

Loss or destruction of patent

Notes —This section corresponds to section 44 of the English Patents and Designs Act, 1907

40 (1) The exhibition of an invention at an industrial or international exhibition, certified as such by the Governor General in Council, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place

Provisions as to exhibitions

ion during the period of the
ithout the privity or con-
the inventor to apply for
the validity of any patent
granted on the application

Provided—

(a) the exhibitor, before exhibiting the invention, gives the Controller the prescribed notice of his intention to do so, and

(b) the application for a patent is made before or within six months from the date of the opening of the exhibition

(2) The Governor General in Council m
of India, apply this section to any exhibitic
in like manner as if it were an industrial or
as such by the Governor General in Council,
provide that the
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Notes —"So jealous is the law of any use of the invention for profit that the exhibition of the articles subsequently patented, (*Lister Norton Brothers & Co*, (1886) 3 R P C 199 or the deposit of the articles in a warehouse for the purpose of sale (*Mullins v Hart*, 1852, 3 Car & Kir 297) is sufficient to avoid the patent even though no actual sale is proved" *Halsbury*, Vol 22, p 144 An exception to this rule is made in this section

41. The Trustees of the Indian Museum may at any time require a patentee to furnish them with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute, by the Governor General in Council

Models to be furnished to Indian Museum

Notes —This section corresponds to section 47 of the English Patents and Designs Act of 1907

42 (1) A patent shall
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Foreign vessels in British Indian waters

Notes—'The amendment provides for the possibility of granting relief in infringement actions in respect of valid claims in spite of the inclusion in the patent of invalid claims The object is to prevent patentees from being penalised for *bona fide* mistakes The amendment follows the provisions of the British Act of 1919'—*Notes on Clauses*

Remedy in case of groundless threats of legal proceedings

36 Where any person claiming "to have an interest in a patent * by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit, ... may ... inge ... the patent *

'Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence"*

Notes—For examples of threats by circular, *vide Cars* v *Bland Light Syndicate*, (1910) 28 R P C 33 The words or otherwise are not confined to threats *ejusdem generis* with circulars or advertisements but cover letters written in answer to inquiries *Skinner Co* v *Shew Co* (1893) 1 Ch 413 C A In order to constitute a threat the letter should refer specifically to any patent *Douglass* v *Pintsch* (1897) 1 Ch 176—*Halsbury* Vol 22 p 227

Miscellaneous

Grant of patents to two or more persons

37 Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent be treated for the purpose of the devolution of the legal interest therein as joint tenants, but subject to any contract to the contrary each of such persons shall be entitled to use the invention for his own profit without accounting to the others but shall not be entitled to grant a license without their consent and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives

Notes—A co owner of a patent may use the patent without the consent of the other co owne[illegible] assigning the [illegible] the absence [illegible] any share of [illegible]

Novelty of invention

38 (1) An invention shall be deemed a new invention within the meaning of this Act—

(*a*) if it has not, before the date of the application for a patent thereon, been publicly used in any part of British India, or been made publicly known in any part of British India, and

(*b*) if the inventor has not by secret or experimental user made direct or indirect profits from his invention in excess of such an amount as the Court or the Governor General in Council, as the case may be, may, in consideration of all the circumstances of the case deem reasonable

(2) The pub[illegible] application for [illegible] within the mea[illegible] tiously or in fr[illegible] to the public in fraud of such inventor or in breach of confidence

Provided that such inventor has not acquiesced in the public use of his invention and that, within six months after the commencement of that use he applies for a patent

* Substituted by Act 7 of 1930

Notes —When the design in question had been in use in the locality from long time before ... applied for by the new or original the Designs Act A com ... was a combination of a character which involved the exercise of any special inventive power or had some originality about it L R 3 A 513=(1922) A 496 This section makes distinction between public user and private user 36 Bom L R 881=A I R 1934 Bom 407 As to what is public user, *vide ibid* Section 38 allows a secret user for a reasonable profit *Ibid*

Loss or destruction of patent

39 If a patent is lost or destroyed or its non production is accounted for to the satisfaction of the Controller, the Controller may at any time, on payment of the prescribed fee, seal a duplicate thereof

Notes —This section corresponds to section 44 of the English Patents and Designs Act, 1907

Provisions as to exhibitions

40 (1) The exhibition of an invention at an industrial or international exhibition certified as such by the Governor General in Council or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application

Provided—

(a) the exhibitor, before exhibiting the invention, gives the Controller the prescribed notice of his intention to do so, and

(b) the application for a patent is made before or within six months from the date of the opening of the exhibition

(2) The Governor General in Council may, by notification in the *Gazette of India*, apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by the Governor General in Council and any such notification may provide that the ... to the Controll ... absolutely or up ...

Notes — So jealous is the law of any use of the invention for profit that the exhibition of the articles subsequently patented, (*Lister Norton Brothers & Co*, (1886) 3 R P C 199 or the deposit of the articles in a warehouse for the purpose of sale (*Mullins* v *Hart* 1852 3 Car & Kir 297) is sufficient to avoid the patent even though no actual sale is proved ' *Halsbury* Vol 22, p 144 An exception to this rule is made in this section

Models to be furnished to Indian Museum

41 The Trustees of the Indian Museum may at any time require a patentee to furnish them with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the amount to be settled, in case of dispute by the Governor General in Council

Notes —This section corresponds to section 47 of the English Patents and Designs Act of 1907

Foreign vessels in British Indian waters

42 (1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any Court in British India or the use of an invention in a foreign vessel within

that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of any thing intended to be sold in or exported from British India

(2) This section shall not extend to vessels of any Foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in British vessels while in the ports of that State, or in the waters within the jurisdiction of its Cour s

Notes—This section corresponds to section 48 of the English Patents and Designs Act 1907

PART II

DESIGNS

Registration of Designs

43 (1) The Controller may, on the application of any person claiming to be the proprietor of any new or original design *not previously published in British India*, register the design under this Part

Application for registration of designs

(2) The application must be made in the prescribed form and must be left at the Patent Office in the prescribed manner and must be accompanied by the prescribed fee

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question

(4) The Controller may, if he thinks fit, refuse to register any design

application for registration

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common type 77 Ind Cas 517, see also 35 P L R 731=A I R 1934 Lab 709

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ior shall the registration

thereof be invalidated—

(*a*) on the ground of the design not being a 'new or original design' * by reason only that it was so previously registered, or

previously published in

to goods of any class

extend the period of copyright in the design beyond that arising from previous registration' †

* Substituted by Act VII of 1930 † Inserted by Act VII of 1930

Notes—This section corresponds to section 50 of the English Patents and Designs Act, 1907

Certificate of registration.

45 (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered

(2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

Notes—This section corresponds to section 51 of the English Patents and Designs Act, 1907

Register of Designs

46 (1) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed

(2) The register of designs existing at the commencement of this Act shall be incorporated with, and form part of, the register of designs under this Act

(3) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorized to be entered therein

Notes—This section corresponds to section 52 of the English Patents and Designs Act, 1907

Copyright in Registered Designs

Copyright on registration

47. (1) When a design is registered, the registered proprietor of the designs shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of five years

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years

Notes—This section corresponds to section 53 of the English Patents and Designs Act, 1907

Requirements before delivery on sale

48 (1) Before delivery on sale of any articles to wh ch a registered design has been applied, the proprietor shall—

(*a*) if exact representations or specimens were not furnished on the application (for registration) furnish to the Controller the prescribed number of exact repre[illegible] the designs , and, if he fails to do so, the [illegible] the register, and thereupon the copyright [illegible]

(*b*) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered , and, if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or

(*a*) for the purpose of sale, to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied, or

t or obvious imitation thereof
of the registered proprietor,
posed for sale that article

(2) If any person acts in contravention of this section, he shall be liable for every contravention—

(*a*) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt, or

(*b*) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (*a*) shall not exceed one thousand rupees

(3) When the Court makes a decree in a suit under sub section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs

Notes—A mere useless appendage intended to serve as a screen to or a mere device to hide an actual infringement cannot protect the defendant in an action for damages for infringement of a patented invention 2 O W N 908=A I R 1925 Oudh 652 Notice warning about defendant's liability need not rigidly follow words of Statute A I R 1933 Rang 240 Question of damage must be considered when allotting penalties for various offences under s 53 *Ibid* In a suit for damage a defence that the patent is neither new nor original can be raised A I R 1934 Lah 709=35 P L R 731. The defendant can also raise the defence that the plaintiff although registered proprietor is not the real proprietor A I R 1934 All 798=1934 C L J 664

Application of certain provisions of the Act as to patents and designs

54 The provisions of this Act with regard to certificates of the validity of a patent and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention

Notes—This section corresponds to section 61 of the English Patents and Designs Act, 1907

PART III

GENERAL.

Patent Office and Proceedings thereat.

Patent Office.

55. (1) The Governor General in Council may provide, for the purposes of this Act, an office which shall be called, and is in this Act referred to as, the Patent Office

(2) The Patent Office shall be under the immediate control of the Controller of Patents and Designs who shall act under the superintendence and direction of the Governor General in Council

(3) There shall be a seal for the Patent Office

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorized by the Governor General in Council

Notes—This section corresponds to section 62 of the English Patents and Designs Act, 1907

Officers and Clerks

56 The Governor General in Council may appoint the Controller, and so many officers and clerks, with such designations and duties as he thinks fit

Fees

Fees

57. (1) There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to the patents and designs under this Act, such fees as may be prescribed by the Governor General in Council so, however, that the fees prescribed in respect of the instruments and matters mentioned in the schedule shall not exceed those there specified

(2) A proceeding in respect of which a fee is payable under this Act of the rules made thereunder shall be of no effect unless the fee has been paid

Notes —This section corresponds to section 65 of the English Patents and Designs Act, 1907.

Provisions as to Registers and other Documents in the Patent Office

Notice of trust not to be entered in registers

58 There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust, expressed, implied or constructive

Notes —This section corresponds to section 66 of the English Patents and Designs Act, 1907 No notice of any trust expressed implied or constructive can be entered in the register—*Halsbury*, Vol II p 180

Inspection of, and extracts from, registers

59 Every register kept under this Act shall at all convenient times be open to the inspection of the public subject to the provisions of this Act , and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee

Notes —This section corresponds to section 67 of the English Patents and Design [illegible] henever the offi [illegible] copies sealed [illegible] e given to any person requiring the same on payment of the prescribed fee—*Halsbury*, Vol II, p 181

Privilege of reports of Controller

60. Reports of or to the Controller made under this Act shall not in any case be published or be open to public inspection

Notes —This section corresponds to section 68 of the English Patents and Designs Act, 1907

Prohibition of publication of specification drawings, etc , where application abandoned, etc

61 (1) Where an application for a patent has been abandoned or become void, the specifications and drawings (if any), accompanying or left in connection with such application, shall not,save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the Controller

[illegible] for a design has been abandoned or refused, the [illegible] tracings, representations or speci- [illegible] shall not at any time be open to [illegible] oller

Notes —This section corresponds to section 69 of the English Patents and Designs Act, 1907

Power for Controller to correct clerical errors

62 The Controller may, on request in writing accompanied by the prescribed fee,—

(*a*) correct any clerical error in or in connection with an application for a patent or in any patent or any specification,

(*b*) [Omitted by Act 7 of 1930]

(*c*) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs

Notes—*The only persons who can apply under this section is the registered proprietor or some person in whom his interest is vested* 22 C W N 580=45 C 606=48 Ind Cas 437

Entry of assignments and tı

63* "(1) Where a person becomes entitled by assignment, transmission or other operation of law to a patent, or to the ... may make an ... gister his title, a ... proof of title ... r design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title

(2) Where any person becomes entitled as mortgagee, licensee or otherwise *to any interest in a patent or registered design, he may make application to* ... and the Controller shall on receipt of such ... to his satisfaction, cause notice of the interest ... ıanner in the register of patents or designs as the case may be, with particulars of the instrument, if any, creating such interest"

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act, and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with the patent or design, and to give effectual receipts for any consideration for any such assignment, license or dealing

Provided that any equities *in respect of the patent or design may be enforced* in like manner as in respect of any other movable property

"(4) Except in the case of an application made under section 64, a docu-

in a design or to any interest therein, unless the Court for reasons to be recorded in writing, otherwise directs"

Notes—When a person becomes entitled to the copyright in a registered design, or to any share or interest therein by assignment, transmission or other operation ... her exclusively or ... h proprietor, or ... and left at the ... *l Designs*, p 375 The assignee has the right to sue for infringement *Duncan* v *Lockerbe*, (1912) 133 L T Jo 57. But any equities may be enforced in like manner as in respect of any other personal property *Ibid* See also *New Nixon Tyre* v *Spilsbury*, (1898) 15 R. P. C 567 C A A person claiming as mortgagee of a patent is not the proprietor of the patent and he must be registered as mortgagee *Van Gelder, Aipuman & Co* v *Swerby Bridge Flour Society*, (1899) 9 R P C 208 C A =44 Ch D 374 The assignment shoı ... s right may be jeopardised *New N* ... P C 567 C A =(1898) 2 Ch 484 ... ıerson who has no notice of assignm ... E & B 686;

* Substituted by Act 7 of 1930.

Hassal v *Wright*, (1870) L R. 10 Eq 509 By registration the assignment dates back from the date of the assignment *Hassal* v *Wright*, (*ubi supra*)

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evidence, save in exceptional circumstances, part of the title to a patent or design of a document or instrument not entered in the register of the Patent Office This sub section follows the provisions of the English Law of 1919 and replace the provisi on at present contained is section 20 (4) —*Notes on Clauses*

Rectification of register by Court

64 (1) The "Controller"* may, on the application in the prescribed manner of any person aggrieved by the non insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making expunging or varying such entry "as he thinks fit and rectify the register accordingly"*

(2) The "Controller"* may in any proceeding under this section decide any question that it may be necessary or expedient to decide in conection with

urt from any order of the Con may refer any application under and the High Court shall dispose of any application so referred'

(4) Any order of Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly

*"(5) Nothing in this section shall be deemed to empower the Controller—

(*a*) to rectify the register of patents or to decide any question relating to a patent, otherwise than for the purpose of correcting a mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(*b*) to make any such order cancelling the registration of a design as is provided for in section 51 A"

Notes —The ordinary way of expunging the registration of des gn is to apply to this Court under this section 22 C W N 580=45 C 606=48 Ind Cas 696 The words 'non insertion in or omission from the register in this section do not exclude cancellation and so the High Court cannot interfere under that section when there has been an improper cancellation *Ibid*

Powers and Duties of Controller

Powers of Controller in proceedings under Act

65 Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evidence and administering oaths and enforcing the attendance of witnesses and compelling the production of documents and awarding costs

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Publication of patented inventions

66. The Controller shall issue periodically a pub inventions containing such information as the Governor General in Council may direct

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* Substituted by Act 7 of 1930

Power for Controller to correct clerical errors

62 The Controller may, on request in writing accompanied by the prescribed fee,—

(a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification ,

(b) [Omitted by Act 7 of 1930]

(c) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design or in any other matter which is entered upon the register of patents or the register of designs

Notes —The only persons who can apply under this sect on is the regis ered proprietor or some person in whom his interest is vested 22 C W N 580=45 C 606=48 Ind Cas 437

Entry of assignments and transmissions in registers

63 * '(1) Where a person becomes entitled by assignment, transmission or other operation of law to a patent, or to the ... may make an ... gister his title, and the Controller shall, on ... proof of title o his satisfaction register him as the proprietor of such patent or design and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title

(2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent or registered design, he may make application to ... and the Controller shall on receipt of such ... to his satisfaction, cause notice of the interest ... anner in the register of patents or designs as the case may be, with particulars of the instrument, if any, creating such interest '

(3) The person registered as the proprietor of a patent or design shall subject to the provisions of this Act, and to any rights appearing from the register to be vested in any other person have power absolutely to assign grant licenses as to, or otherwise deal with the patent or design, and to give effectual receipts for any consideration for any such assignment license or dealing

Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other movable property

"(4) Except in the case of an application made under section 64 a docu ment or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub sections (1) and (2) shall not be admitted in evidence in any Court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court for reasons to be recorded in writing, otherwise directs "

Notes —When a person becomes entitled to the copyright in a registered design or to any share or interest therein by assignment, transmission or other operation of law, or where a person acquires any right to apply the design either exclusively or ... ch proprietor, or ... and left at the ... *Designs*, p 375 ... *ckerbe*, *(1912)* 133 ... in respect of any other personal property ... See also *New Nixon Tyre* v *Spilsbury*, (1898) 15 R P C 567 C A A person claiming as mortgagee of a patent is not the proprietor of the patent and he must be registered as mortgagee *Van Gelder, Aspinon & Co* v *Swerby Bridge Flour Society*, (1899) 9 R P C 208 C A =44 Ch D 374 The assignment should be entered as early as possible, otherwise his right may be jeopardised *New Nixon Tyre & Cycle Co* v *Spilsbury* (1898) 15 R P C 567 C A =(1898) 2 Ch 484 In the absence of registration a suit against a person who has no notice of assignment is maintainable *Chollet* v *Hoffman* (1857) 7 E & B 686;

* Substituted by Act 7 of 1930

Hassal v Wright, (1870) L R 10 Eq 509 By registration the assignment dates back from the date of the assignment *Hassal v Wright, (ubi supra)*

The assignment of a patent must be made by deed and stamped as though it were actual conveyance on sale of property *Smelling v Inland Revenue Commissioners* (1887) 1 Q B 175 C A. The assignment may be made in any form *Cartwright v Amatt*, (1799) 2 Bos & P 43

'The object of the new sub sect on (4) of section 64 is to prevent the admission in evidence, save in exceptional circumstances, part of the title to a patent or design of a document or instrument not entered in the register of the Patent Office This sub section follows the provisions of the English Law of 1919 and replace the provisi on at present contained is section 20 (4) —*Notes on Clauses*

Rectification of register by Court

64 (1) The "Controller"* may, on the application in the prescribed manner of any person aggrieved by the non inser tion in or omission from the register of patents or designs of any entry or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making expunging or varying such entry "as he thinks fit and rectify the register accordingly "*

(2) The "Controller * may in any proceeding under this section decide any question that it may be necessary or expedient to decide in conection with the rectification of a register

*"(3) An appeal shall lie to the High Court from any order of the Con troller under this section, and the Controller may refer any application under this section to the High Court for decision and the High Court shall dispose of any application so referred '

(4) Any order of Court rectifying a register shall direct that notice of the [illegible] l manner, who shall [illegible] ngly [illegible] r the Controller— [illegible] question relating to a patent, otherwise than for the purpose of correcting a mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(*b*) to make any such order cancelling the registration of a design as is provided for in section 51 A "

Notes —The ordinary way of expunging the registration of design is to apply to this Court under this section 22 C W N 580=45 C 606=48 Ind Cas 696 The words non insertion in or omission from the register in this section do not exclude cancellation and so the High Court cannot interfere under that section when there has been an improper cancellation *Ibid*

Powers and Duties of Controller

Powers of Controller in proceedings under Act

65 Subject to any rules in this behalf the Controller in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evi dence and administering oaths and enforcing the attendance of witnesses and compelling the production of documents and award ing costs

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Publication of patented inventions

66 The Controller shall issue periodically a publication of patented inventions containing such information as the Governor General in Council may direct

* Substituted by Act 7 of 1930

67 Where any discretionary power is by, or under, this Act given to the Controller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of an application, or of a specification, or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard

Exercise of discretionary power by Controller

Notes—This section corresponds to section 73 of the English Patents and Designs Act 1907

68 The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Governor General in Council for directions in the matter

Power of Controller to take directions of Governor General in Council

Notes—This section corresponds to section 74 of the English Patents and Designs Act, 1907

* 69. (1) The Controller may refuse to grant a patent for an invention, or to register a design, of which the use would, in his opinion, be contrary to law or morality

Refusal to grant patent, etc in certain cases

"(2) An appeal shall lie to the Governor General in Council from an order of the Controller under this section "*

Notes—This section corresponds to section 75 of the English Patents and Designs Act, 1907

70 (1) Where an appeal is declared by this Act to lie from the Controller to the Governor General in Council, the appeal shall be made within "three † months of the date of the order passed by the Controller, and shall be in writing, and accompanied by the prescribed fee

Appeals to the Governor General in Council

(2) In calculating the said period of "three † months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The Governor General in Council may, if he thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the Governor General in Council shall be final

Evidence etc

71. A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone

Certificate of Controller to be evidence

Notes—This section corresponds to section 78 of the English Patents and Designs Act, 1907 A certificate purporting to be under the hand of the Controller as to anything authorized by the Statute is *prima facie* evidence *Halsbury*, Vol II, p 169

72 Copies of all specifications, drawings and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted as soon as may be, after they have been accepted or allowed at the Patent Office, to the Governor of Fort St George in Council, the Governor of Bombay in Council, the Lieutenant Governor of Burma, and to such other

Transmission of certified printed copies of specifications etc

* Section 69 has been re numbered as section 69 (1) and sub section (2) has been inserted by Act 7 of 1930

† The word within quotations has been substituted by Act 7 of 1930

authorities as the *Governor General* in Council may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times, at places to be appointed by those authorities

Notes—This section corresponds to section 80 of the English Patents and Designs Act, 1907.

Applications and notices by post

73 Any application, notice or other document authorized or required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post

Notes—This section corresponds to section 81 of the English Patents and Designs Act, 1907.

Declaration by infant, lunatic, etc

74 (1) If any person is, by reason of infancy, lunacy or other disability, incapable of making any statement or doing any thing required or permitted by or under this Act, the lawful guardian, committee, or manager (if any) of the person subject to the disability, or, if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such statements, or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability

(2) Any appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person, subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Notes—This section corresponds to section 83 of the English Patents and Designs Act, 1907

Security for costs

*"**74A** Where a person giving notice of any opposition under this Act or giving notice to the Court of appeal from any decision of the Controller under this Act, neither resides nor carries on business in British India, the Controller or the Court, as the case may be, may require such person to give security for the payment of all costs incurred and likely to be incurred in the proceedings or appeal as the case may be, and, in default of such security being given, may disallow the opposition or dismiss the appeal "

Agency

Subscription and verification of certain documents

75 The following documents, namely,—

(1) [illegible]
(2) [illegible]
(3) [illegible] of a patent,
(4) applications for the restoration of lapsed patents,
(5) applications for leave to amend,
(6) applications for compulsory license or revocation, and
(7) notices of surrenders of patent

shall be signed and verified in the manner prescribed by the person making [illegible] [illegible] from British India, they may be signed [illegible] dent in British India authorized by him in writing in that behalf

Agency

76 (1) All other applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or

* Inserted by [illegible]

Savings and Repeal

79 Nothing in this Act shall take away, abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof

Savings for prerogative

80 Repealed by Act 12 of 1927

81 Repealed by Act XXXI of 1920

THE SCHEDULE

[*See section 57*]

FEES

	Rs
On application for a patent	10
Before sealing a patent	30
Before the expiration of the 4th year from the date of the patent	50
Before the expiration of the 5th year from the date of the patent	50
Before the expiration of the 6th year from the date of the patent	50
Before the expiration of the 7th year from the date of the patent	50
Before the expiration of the 8th year from the date of the patent	100*
Before the expiration of the 9th year from the date of the patent	100
Before the expiration of the 10th year from the date of the patent	100
*' Before the expiration of the 11th year from the date of the patent	100
Before the expiration of the 12th year from the date of the patent	150
Before the expiration of the 13th year from the date of the patent	150
Before the expiration of the 14th year from the date of the patent	150
Before the expiration of the 15th year from the date of the patent	150
Provided that the fees for two or more years may be paid in advance—	
On application to extend the term of a patent	50
Before the expiration of each year of the extended term of a patent or of a new patent granted under section 15	150
On application for registration of a design	3

THE PENSIONS ACT, 1871

ACT NO XXIII OF 1871

RECEIVED THE G G S ASSENT ON THE 8TH AUGUST, 1871

An Act to consolidate and amend the law relating to pensions and grants by Government of money or land revenue

WHEREAS it is expedient to consolidate and amend the law relating to pensions and grants by Government of money or land revenue, It is hereby enacted as follows —

Preamble

Notes—The Pensions Act is not retrospective in its operation 2 B 294 Grant of villages revenue free is not a pension 18 O C 168 The Act should receive a

* Substituted by Act 7 of 1930

strict construction 1 B 531 , 107 Ind Cas 899 , 80 Ind Cas 606 The word 'pension" implies periodical payments of money by Government to the pensioner 59 C 1=A I R 1931 P C 160 (P C)

I—Preliminary

Short title — 1 This Act may be called The Pensions Act, 1871 ,

Extent of Act — It extends to the whole of British India *

Enactments repealed — 2 The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule

Saving of rules — But all rules in regard to the award and payment of pensions or grants of money or land revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deemed to have been made under this Act so far as they are consistent therewith

Interpretation clause — 3 In this Act, the expression "grant of money or land revenue' includes anything payable on the part of Government in respect of any right, privilege, perquisite or office

Notes —A sum payable by the Government as compensation for forest dues is not a pension and is not exempt from attachment 121 Ind Cas 664

II—Rights to Pensions

Bar of suits relating to pensions — 4 † Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment claim or right for which such pension or grant may have been substituted

Notes —This section prohibits cognizance by a Civil Court of suits save as provided by this Act 5 B 408 P C This section is wider than section 11 and refers not only to pension but to grants of money or land revenue A I R 1930 All 681 , 128 Ind Cas 487

The property sought to be proceeded against by the plaintiffs in this case for the satisfaction of the decree was in the nature of a grant of land revenue and the suit was therefore to be treated as barred by this section 6 B 737 , see also 6 B 209 This Act is not applicable to an endowment for religious purposes 2 M 294 , 5 M 30[illegible]
of [illegible]
34[illegible]
tin [illegible]
C) A suit relating to money payable by Government in lieu of *Sair Akbari* falls [illegible] the revenue [illegible] 3 8 A L J [illegible] on does not [illegible] a heritable right to receive land revenue granted by the Mogul Emperors as reward for services rendered 25 A 73 This section requires as a condition precedent a certificate from the Collector or other authorized revenue officer under s 6 for a Civil Court to have jurisdiction in suits relating to pensions money grants and land revenue conferred by Government independently of whether Government be a party to such suits or not 1 B 75 31 B 512 A pension to fall within this section must be granted by Government 30 M 266 This section does not require that the grant

* Certain words after this repealed by Act 10 of 1914 have been omitted

† According to s 2 of the Oudh Wasikas Act (XXI of 1886) the allowances respectively known as the Amanat Wasikas the Zamanat Wasikas and the Loan Wasikas are pensions within the meaning of the Pensions Act (XXIII of 1871) and that Act shall apply to them as if they were pensions of the classes referred to in ss 4 and 11 of that Act"

9 Nothing in sections 4 and 8 shall affect the right of a grantee of land revenue, whose claim to such grant is admitted by Government to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land

Saving of rights of grantees of land revenue

10 The Local Government may, with the consent of the holder, order the whole or any part of his pension or grant of money or land revenue to be commuted for a lump sum on such terms as may seem fit

Commutation of pensions

IV—Miscellaneous

11 No pension granted or continued by Government on political considerations or on account of past services or present infirmities or as a compassionate allowance,

Eexmption of pension from attachment

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor for any demand against the pensioner, or in satisfaction of a decree or order of any such Court

Notes [illegible] —oney by the Government to the pensi[illegible] Act 26 A 617, 35 C W N 791 P C [illegible] granted not in respect of any right, [illegible] of past services or particular merits or as compensation to dethroned princes, their families and dependants 31 A 312, 24 Ind Cas 805 An assignment of revenue was held to be pension A I R 1930 All 68 An assignment of the revenue of a certain land to the custodian of a shrine for its benefit is not a pension 27 P R 1878 Every grant made for past services is not a pension 11 L W 391 As regards attachment of wasika right—*Vide* 49 Ind Cas 511 A political treaty pension or a jagir granted [illegible] 62 Ind Cas 273, 62 Ind Cas 895 [illegible] vernment are not exempt from attach[illegible] Where a native chief assigned his [illegible] is void under ss 11 and 12 50 M 711=103 Ind Cas 339=A I R 1927 Mad 604 The burden of proving that a Jaghir is a political pension is on the person who alleges it 121 Ind Cas 487 S 11 of the Pensions Act which relates to exemption from attachment refers only to pensions and not to grants of money of land revenue 35 L W 395=1932 M W N 202=137 Ind Cas 799=A I R 1932 Mad 417=A L R 1932 Mad 843

12 All assignments agreements, orders, sales and securities of every kind made by the person entitled to any pension pay or allowance mentioned in section 11, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving any future interest therein are null and void

Assignments &c, in anticipation of pension to be void

[illegible] void if the assignmen is made after the [illegible] 6 A 630 7 A 886, 85 P R 1914, 44 A [illegible] t include grant of land revenue Perpetual [illegible] not a pension Assignment of such grant [illegible]

13 Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof shall be entitled to a reward equivalent to the amount of such pension for the period of six months

Reward to informers

*14 The Chief Controlling Revenue Authority may, with the consent of the Local Government, from time to time make rules consistent with this Act respecting all or any of the following matters —

Power to make rules

(1) the place and times at which, and the person to whom, any pension shall be paid,

(2) inquiries into the identity of claimants,
(3) records to be kept on the subject of pensions,
(4) transmission of such records,
(5) correction of such records,
(6) delivery of certificates to pensioners,
(7) registers of such certificates,
(8) reference to the Civil Court under section 6, of persons claiming a right of succession to or participation in pensions or grants of money or land revenue payable by Government,

and generally for the guidance of officers under this Act

All such rules shall be published in the local Official Gazette, and shall thereupon have the force of law

Notes —This section does not authorise Government or the Board of Revenue to control the discretion given to the Collector by the Statute 25 M L J 155

SCHEDULE

(*See Section 2*)

Number and year	Title or subject	Extent of repeal
	I—BENGAL REGULATIONS	
XXIV of 1793	A regulation for re enacting with modifications, the rules passed by the Governor General in Council on the 10th June 1791 for determining the Continuance or Discontinuance of the Pensions heretofore paid by the Proprietors and Farmers of Land but included in the Jama or Revenue payable to Government at the Decennial Settlement and also of the Pensions heretofore paid from the Sarkar abolished	The whole
XXXIV of 1795	A Regulation for re enacting with modifications the rules respecting the Pensions payable from the Government and Mulki Treasuries in the Province of Benares	The whole
XXIV of 1803	A Regulation for trying the Validity of Titles of Persons receiving, or claiming a right to receive Pen[illegible] India Company †	The whole

* Section 14 has been amended in its application to U P by U P Act 12 of 1927

† Certain entry after this repealed by Act 12 of 1927 has been omitted

Number and year	Title or subject	Extent of repeal
XXII of 1806 ...	A Regulation for modifying the Rules hitherto observed in the admission and Payment of Claims to Pensions	The whole
II of 1811 .	A Regulation for amending the existing Rules for the support of Invalid Native Commissioned and Non Commissioned Officers	The whole
XI of 1813 ...	A Regulation for modifying some of the Rules before established respecting the Payment of Pensions and for preventing the Abuses committed in the receipt of Pensions	The whole
VI of 1817 ..	A Regulation to explain the purport and intent of the Provision contained in section 11, Regulation XXIV 1803	The whole
	II.—MADRAS REGULATIONS	
I of 1803 ..	A Regulation for defining the Duties of the Board of Revenue and for determining the extent of the Powers vested in the Board of Revenue	Section 43
II of 1803 ..	A Regulation for describing and determining the Conduct to be observed by Collectors in certain cases	Section 30
IV of 1831 ..	A Regulation for better securing to the Grantees personal or hereditary Grants of Money or of Land Revenue, conferred by the Government in consideration of Services rendered to the State, or in lieu of resumed Offices or privileges, or, of Zamindaries, or Palleyams forfeited or held under Attachment or Management by the Officers of Government, or as Yaumias or Pensions	The whole.
	III.—BOMBAY REGULATION	
XIX of 1827 ..	A Regulation for bringing under the operation of the Regulations the Bombay territories in the Dekhan and Khandesh	Section 6, clauses 2 & 3
	IV.—ACTS	
XXXI of 1836 ..	Government Grants . .	The whole
XXIII of 1838 ...	Exemption of Grants from attachment	The whole
VI of 1849 .	An Act for securing Military and Naval Pensions and Superannuation Allowances	The whole

THE POST OFFICE CASH CERTIFICATES ACT, 1917.

ACT NO. XVIII OF 1917.

RECEIVED THE ASSENT OF THE G G ON THE 19TH SEPTEMBER, 1917

An Act to restrict the transfer of Post Office 5 years Cash Certificates and to provide for the payment of Certificates standing in the name of deceased persons

WHEREAS it is expedient to restrict the transfer of Post Office 5 year Cash Certificates and to provide for the payment of Certificates standing in the name of deceased persons; It is hereby enacted as follows :—

Notes—The form of Post Office Cash Certificates contains the following inscription printed thereon, "Not transferable except with the permission of the Post Master General" and non transferability has from the first been a condition attaching to the certificate This restriction, however, in the absence of specific legislation would not be operative against the general right of transfer of all actionable claims conferred by section 130 of the Transfer of Property Act, 1882 The present Bill provides for the validation of the abovementioned restriction except where the Cash Certificates form part of the estates of the deceased persons or are necessarily transferable by law, i e, as in the case of the holder's insolvency Opportunity has at the same time been taken to place the payment of Cash Certificates belonging to the estates of the deceased persons on the same footing as Government Savings Bank deposits forming part of the estates of such persons—*Statement of Objects and Reasons*

Short title

1 This Act may be called the Post Office Cash Certificates Act, 1917

Prohibition of transfer of Post Office 5 year Cash Certificates without the consent of the Post Master General

2 (1) Notwithstanding any provision in any enactment or any rule of law for the time being in force to the contrary, no transfer (whether made before or after the commencement of this Act) of a Post Office 5 year Cash Certificate shall be valid without the previous consent in writing of (an officer of the Post Office authorized by general or special order of the Governor General in Council in that behalf)*

(2) In this section "transfer" means a transfer *inter vivos* and does not include a transfer by operation of law

Notes—In the absence of a restriction contained in this section a Post Office 5 year Cash Certificate which is an actionable claim could be transferred under section 130 of the Transfer of Property Act By that section an assignment must be in writing 9 Ind Cas 287=9 M L T 102, see also A I R 1923 Pat. 165 The assignment must be of the whole amount, *Vide* 87 Ind Cas 382=48 M. L. J 432=1925 Mad 753=1925 M W N 180 Oral assignment is not valid 15 Ind Cas 380=11 M L T 246

3 (1) If a person dies and is at the time of his death the holder of a

Payr
of Pc
Certi

ment
of sec
such
for the time being due on such certificate were a deposit in such a Bank

* Substituted by Act 32 of 1920

[and as if for the words "three thousand in sections 4 and 8 of the said Act the words 'five thousand' were substituted] *

Provided that the powers conferred by the said provisions on the secretary of a Government Saving Bank shall be exercisable by the Post Master General for the area within which the Post Office of issue of such certificate is situate

Provided further that, where in one case payment is to be made of Certificates issued from more post offices than one, the said powers shall be exerciseable by the Post Master General for the area in which any of the said post offices is situate

(2) Nothing in sub section (1) shall be deemed to require any person to accept payment of the amount due on a Post Office 5 year Cash Certificate before the same has reached maturity

Notes —This section places the payment of Cash Certificates belonging to the estates of deceased persons on the same footing as Government Saving Bank deposits forming part of the estates of the same persons—*Vide Statement of Objects and Reasons*

THE POWERS-OF-ATTORNEY ACT, 1882

ACT NO VII OF 1882

RECEIVED THE G G'S ASSENT ON THE 24TH FEBRUARY, 1882

An Act to amend the law relating to Powers of Attorney

For the purpose of amending the law relating to Powers of Attorney, It is hereby enacted as follows —

Preamble

Short title

1 This Act may be called 'The Powers of Attorney Act, 1882'

Local extent

It applies to the whole of British India

Commencement

and it shall come into force on the 1st day of May, 1882

[illegible] of powers of attorney that the g ven is in the first to be re [illegible] larat on of that special purpose [illegible] e needed for its effectuation [illegible] M H C R 177 Powers of attorney should be construed strictly U B R (1903) Vol II Power-of Attorney 5

Execution under power of attorney

2. The donee of a power c[illegible] do any [illegible] ith his [illegible] where [illegible] donor of the power, and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal of the donor thereof

This section applies to powers of attorney created by instruments executed either before or after this Act comes into force

Notes —Where powers of attorney are given to several persons one with the consent of the other can execute the document on behalf of the donor and the other can be attesting witness to that document 6 A L J 46? = 2 Ind Cas 395 A power of attorney has to be construed strictly It is necessary to find any power contended for within the four corners of the instument 12 M L T 528 = 23 M L J 595 = M W N 1912, 1201 = 17 Ind Cas 139, *Bryat v La Banque*, (1893) A C 170 at p 177, 32 Ind Cas 419 = 43 C 527 = 43 I A 48, 48 Ind Cas 209 When a power of attorney authorises a person to do all things and take all steps which may be

* Substituted by Act XXXII of 1920

necessary to complete the execution of a decree it must be regarded as general power-of attorney 24 M L J 180=M W N 1913, 72=13 M L T 114 *The legal nature* of a document must be determined by its contents and not by the value of the stamp duty paid on it *Ibid* While it is true that established law requires a power of attorney to be construed strictly, it is also correct to hold that when an agent has a general power of attorney to act in some business or series of transactions he may be assumed to have all usual powers 26 M L J 185=23 Ind Cas 225 It is a well settled rule of law that powers of attorney should be strictly construed General words of borrowing should be restricted to matters *ejusdem generis* with those already stated 39 M 318 A power to sell, purchase or mortgage property does not include a power to give simple money bond for money borrowed 36 Ind Cas 968, 36 Ind Cas 19 Right to recover debts by suit includes the right to appeal 63 Ind Cas 101 *A power of attorney authorising a person to look after management of a jagir* does not empower the agent to defend the owner's title to the jagir in a suit. 47 Ind Cas 528 A power to sign a mortgage does not carry with it a power to contract a debt on a mortgage 3 Pat L T 442=67 Ind Cas 315

Payment by attorney under power, without notice of death, &c, good

3. Any person making or doing any payment or act in good faith, in persuance of a power of attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same

But this section shall not affect any right against the payee of any person interested in any money so paid, and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him

This section applies only to payments and acts made or done after this Act comes into force

Notes —This section correspo ds to section 208 of the Indian Contract Act, 1872, ... document, and revokes ... under such circumstances ... of the document or to the ... Ind Cas 90=18 C L ... attorney for doing acts in good faith even after the death of the grantor of the power, if the fact of his death be not known to him A I R 1934 Nag 274

Deposit of original instruments creating powers of attorney

4 (*a*) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any be deposited in the High Court within the local limits of whose jurisdiction the instrument may be

(*b*) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and a certified copy thereof shall be delivered out to him on request

(*c*) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy

(*d*) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit *thereof* in the High Court

(*e*) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, ... (*c*)

... creating powers of attorney execu... force.

5 A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non testamentary instrument or doing any other act which she migh... to instrument

Power of attorney of married women

T... omes into force

Notes – By this section the married women are given powers to execute powers of attorney for the purpose of executing any non testamentary instrument or doing any other act which she herself might execute or do *Vide* 1933 M. W N 636=142 Ind Cas 646=A I R 1933 Mad 407=64 M L J 449

6. [*Repealed by Act XII of 1891.*]

THE PRESIDENCY SMALL CAUSE COURTS ACT, 1882 *

ACT NO. XV OF 1882.

RECEIVED THE G G'S ASSENT ON THE 17TH MARCH, 1882

An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency towns †

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay ; It is hereby enacted as follows :—

Preamble

... this Act lies in the extension ... This extension was asked for ... 867 —*Statement of Objects and* ... isdiction to entertain a suit by ... rimonial suit and to recover ... om L R 1293

CHAPTER I

PRELIMINARY

1. This Act may be called The Presidency Small Cause Courts Act, 1882 ; and it shall come into force on the first day of July, 1882

Short title
Commencement

But nothing herein contained shall affect the provisions of the Army Act,‡§ section 151, or the rights or liabilities of any person under any decree passed before that day

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* For Statement of Objects and Reasons, *see Gazette of India*, 1880 Pt V p ... Pt V p 381 ; for ... p 3 ; for proceedings ... *id*, 1882, Supplement, ... l, Act 3 of 1927 and ... led by the repealing

Notes —'To the saving clause of section 1 of the Bill we have added a provision that the Act shall not affect the rights and liabilities of any person under any decree passed before the Act comes into force *Second Report of the Select Committee*

Repeal of enactments

2 On and from the said day the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein

But all Courts constituted, appointments made and securities given under any of the said enactments shall, so far as may be, be deemed to have been respectively constituted, made and given under this Act

References in previous Acts

All references to any enactment hereby repealed made in Acts passed prior to the said day shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof

Notes —Repeal does not revive the enactments repealed

Amendment of Acts

3 In Act No XXIII of 1850 (*for securing the Land revenue of Calcutta*), section 3 for the words and figures "Act VII, 1847,' the words and figures, 'The Presidency Small Cause Courts Act, 1882, Chapter VIII,' shall be substituted, the words, "as provided by the said Act' shall be repealed, and for each of the expressions 'a Commissioner of the Court for recovery of small debts referred to in the said Act' and "the said Commissioner' the words 'the Judges of the Court of Small Causes at Calcutta, shall be substituted *

'Small Cause Courts defined

4 In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be, and the expression "Registrar' includes a Deputy Registrar †]

CHAPTER II

CONSTITUTION AND OFFICERS OF THE COURT

Courts of Small Causes established

5 There shall be in each of the towns of Calcutta Madras ‡ and Bombay, a Court to be called the Court of Small Causes of Calcutta, Madras § or Bombay, as the case may be

Court to be deemed under superintendence etc of High Court

6 The Small Cause Court shall be deemed to be a Court subject to the Superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the twenty eighth day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure 'and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879 '|¶ and the High Court shall have in respect of the Small Cause Court the same powers as it has under the twenty four and twenty fifth of Victoria, Chapter 104 section 15, in respect of Courts subject to its appellate jurisdiction

* Certain words after this repealed by Act V of 1908 have been omitted

... been added by the Presidency Small Cause

... he constitution of the Madras Court of Small ... les and Orders Ed 1898 p 204

... been inserted by the Presidency Small Cause

Notes—Having regard to this section the High Court has jurisdiction to revise under section 622, Civil Procedure, 1882 orders which are said to have been made without jurisdiction in the Presidency Small Cause Court 30 C 588=7 C W. N 547

7 * The Local Government may, from time to time, by notification in the Official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court

Appointment, suspension and removal of Judges

† "Provided that—

(1) no person shall be appointed to be the Chief Judge of a Small Cause Court unless he is—

(*a*) an advocate of a High Court of Judicature established under the Indian High Courts Act, 1861, ‡ or the Government of India Act, 1915, or

(*b*) a vakil or attorney of one of the said High Courts,

(2) no person shall be appointed to be a Judge of a Small Cause Court unless he is—

(*a*) an advocate, vakil or attorney of one of the said High Courts, or

(*b*) a Judge of a Court of Civil Judicature of not less than 5 years' standing, and

(3) of the persons so appointed to be Judges including the Chief Judge, not less than one third shall be advocates of one of the said High Courts'

The Local Government may by a like notification suspend, § and remove any judge so appointed ‖

Notes—' We have altered this section relating to the appointment of the Judges so as to provide that one third at least of the Judges shall be advocates of a High Court We think the professional members of the Court should be chosen from the Advocates of the High Courts who may be expected to have acquired some experience of the country' *First Report of the Select Committee*

Rank and precedence of Judges

8 The Chief Judge shall be the first of the Judges in rank and precedence

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct

8A ¶ (1) During any absence of the Chief Judge or any Judge of the said Court, or during the period for which any Judge is acting as Chief Judge, the Local Government may appoint any person, having the qualifications required by section 7, to act as Chief Judge or Judge of the said Court, as the case may be

Performance of duties of absent Judge

(2) Every person so appointed shall be authorized to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge, or of the Judge acting as Chief Judge, or until the Local Government sees cause to cancel the appointment of such acting Chief Judge or Judge as the case may be

Procedure and practice of Small Cause Court

9 ** (1) The High Court may, from time to time, by rules having the force of law,—

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* Certain words before this repealed by Act 38 of 1920 have been omitted
† This proviso has been substituted by Act 23 of 1917
‡ Stat 24 & 25 Vict, c 104
§ Certain words after this repealed by Act 38 of 1920 have been omitted
‖ T [illegible] by the Presidency [illegible]
¶ [illegible] ause Courts Act, (III of [illegible] ause Courts Act, (1 of 1895)
** S 9 has been substituted by the Presidency Small Cause Courts Act, (1 of 1895) s 5 for the one originally enacted

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty first day of December, 1894, in or under this Act or any other enactment for the time being in force, and

(aa) *empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters, and

(b) cancel or vary any such rule or rules

Rules made under this section may provide, among other matters, for the exercise, by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty first day of December, 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section

[illegible]

Cases —*47 C 763=24 C W N 783=60 Ind Cas 917, 114 Ind Cas 842, 33* Bom L R *759*

Chief Judge to distribute business of Court

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof

Procedure in case of difference of opinion

11 Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail, and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Seal to be used

12 The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government †

Appointment of Registrar and ministerial officers

13 The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court,

and the Chief Judge may, from time to time, subject to the control of the [illegible] "Dep[illegible]ty Register and"‡ as many clerks, bailiffs and [illegible]necessary for the administration of justice [illegible] performance of the powers and duties

* Cl (*aa*) has been added by the Presidency Small Cause Courts Act, (III of 1899) s 4

† For notifications under this section in—

Bombay See Bombay List of Local Rules and Orders, Ed 1896, Vol I p 422,

Madras . See List of Local Rules and Orders Ed 1898, Vol I, p 204

‡ In s 13 the words quoted have been inserted by the Presidency Small Cause Courts Act, (III of 1899) s 5

conferred and imposed on it by this Act or any other law for the time being in force

Powers and duties of such officers

The Registrar and other officers so appointed shall exercise such powers and discharge such duties of a ministerial nature, as the Chief Judge may from time to time, by rule direct

The Chief Judge may suspend or remove any Registrar or other officer so appointed, but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees

14 The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject matter does not exceed twenty rupees And subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try

* *Explanation* —For the purposes of this section an application for possession under section 41 shall be deemed to be a suit

Notes — "The only other amendment we need notice in this portion of the Bill ... the appointment of a Registrar ... o invest him with jurisdiction ... amendment has been made at ... there is precedent for it in the Mofassil Small Cause Courts Act XI of 1865" *First Report of the Select Committee*

Judge or other officer not to practice or trade

15 No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession ... or concerned, shall be deemed ... the Indian Penal Code ... prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian Legislature

CHAPTER III

LAW ADMINISTERED BY THE COURT

Questions arising in suits etc, under Act to be decided according to law administered by High Court

16 All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court small be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction

CHAPTER IV

JURISDICTION IN RESPECT OF SUITS

Local limits of jurisdiction of Court

17 The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court

* This explanation has been added by the Presidency Small Cause Courts Act, 1895 (I of 1895) s 6

Suits in which Court has jurisdiction

18 Subject to the exception in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject matter does not exceed two thousand rupees; and—

(*a*) the cause of action has arisen either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has for reasons to be recorded by it in writing been given before the institution of the suit, or

(*b*) all the defendants at the time of the institution of the suit actually and voluntarily reside or carry on business or personally work for gain, within such local limits, or

(*c*) any of the defendants at the time of the institution of the suit actually or voluntarily resides or carries on business or personally works for gain within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business or personally work for gain as aforesaid, acquiesce in such institution

Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal *

Explanation I—When in any suit the sum claimed is by a set off admitted by both parties, reduced to a balance not exceeding two thousand rupees the Small Cause Court shall have jurisdiction to try such suit

Explanation II.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed *to reside at both places in respect of any cause of action arising* at the place where he has such temporary lodging

Explanation III—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or in respect of any cause of action arising at any place where it has also a subordinate office at such place

Notes—When the cause of action has arisen within the jurisdiction of *Presidency Small Cause Courts but the defendant* a military officer, resides out of such jurisdiction the Court can grant leave under sub section (1)—18 C 372 see also 25 B 528 Section 15 of the Army Act does not either expressly or inferentially affect the jurisdiction given to Small Cause Courts by Act XV of 1882 The discretion to the Small Cause Courts in giving leave to sue under s 18 of Act XV of 1882 is one [illegible] cases 13 C 37, see also [illegible]

[illegible] of a decree where a property exceeding Rs 2000 [illegible] total decretal amount for which the decree can be executed also exceeds Rs 2000 58 C 1261 The amount recovered and not the amount claimed is the predominant factor for determining whether or not a suit is cognizable by the Small Cause Court 115 Ind Cas 85 see also 58 C 1251=A I R 1932 Cal 67

Expl—1—21 C 419 20 C 527 see also 97 Ind Cas 246=43 C L J 574

Plaintiff may abandon suit against defendant resident out of jurisdiction

18A † The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court, to abandon the

* This proviso has been added by the Presidency Small Cause Courts (I of 1895) s 7

† S 18 A has been inserted by the Presidency Small Causes Court Act (I of s 8

suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain

Suits in which Court has no jurisdiction

19 The Small Cause Court shall have no jurisdiction in—

(a) suits concerning the assessment or collection of the revenue,

(b) suit concerning any act ordered or done by the Governor General in Council or the Local Government or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras, "Bombay or Fort William in Bengal" * in his official capacity, or by any person by order of the Governor General in Council or the Local Government,

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Couat or any such judge or judicial officer;

(d) suits for the recovery of immovable property,

(e) suits for the partition of immovable property,

(f) suits for the foreclosure or redemption of a mortgage of immovable property,

(g) suits for the determination of any other right to or interest in immovable property,

(h) suits for the specific performance or recission of contracts,

(i) suits to obtain an injunction,

(j) suits for the cancellation or rectification of instruments,

(k) suits to enforce a trust,

(l) suits for a general average loss and suits on policies of insurance on sea going vessels,

(m) suits for compensation in respect of collisions on the high seas,

(n) suits for compensation for the infringement of a patent, copyright or trade mark,

(o) suits for a dissolution of partnership or for an account of partnership transactions,

(p) suits for an account of property and its due administration under the decree of the Court,

(q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage,

(r) suits for the restitution of conjugal rights † or for a divorce,

(s) suits for declaratory decrees,

(t) suits for possession of a hereditary office,

(u) suits against Sovereign, Princess or Ruling Chiefs or against Ambassadors or Envoys of Foreign States,

(v) suits on any judgment of a High Court,

(w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force

Clause (f, g h) A suit to recover arrears of maintenance due under a covenant in a mortgage deed by
the incomu of the hypoth
section 2 M W N 1911

Clause (g)—This clause exempts from the jurisdiction of such Courts, suits expressly brought for the purpose of obtaining a decree determ ning a right or interest in immovable property and no suit for money or movable property in which a

* The words within quotations have been subst tuted by Act 10 of 1914

† Certain words after this have been omitted having been repealed by Act 10 of 1914

question of title to immovable property may be raised by the defendant 15 B 400; see also 13 M 904=39 M. L J 490

Clause (h)—*Vide* 45 B 318=22 Bom L. R. 1293=59 Ind Cas 189

Clause (k)—A suit to enforce the arrears of an annuity payable under a Will and to which the executors have assented is cognizable by the Presidency Small Cause *Court*; it does not fall under section 19(k) of the Act 10 Bom L R 758=32 B 575

Clause (m)— [illegible]
occurring in the
will cause incon[illegible]
held to be excluded

Clause (q)—*Vide* 24 M 652; A I R, 1923 Bom 393

Clause (s)—A suit to establish a right given to the unsuccessful party in claim proceedings under the Code of C[illegible] [illegible]
setting aside of a summary order [illegible]
suit for declaration and is not [illegible]
under this clause 28 M L. J [illegible] Ind Cas 900=1915 M W N 370 See also 4 L W 339

19A.* Whenever the Court finds that for want of jurisdiction it cannot [illegible]

[illegible]

order with respect to costs as it may think just, and the Court shall for the purposes of the Indian Limitation Act, [illegible] to entertain the suit by reason of defect of [illegible] [illegible]ed [illegible] [illegible]tiff is afterwards presented to a High Cou[illegible], [illegible] for the amount of the court fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are credited to the Government.

Cases—2 L W 719=18 M L T 754=(1915) M W N 907

Court may by consent try suits beyond pecuniary limits of jurisdiction

20. When the parties to a suit, which, if the amount or value of the subject matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement§ in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject matter thereof may exceed two thousand rupees

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit

Notes—*Vide* 26 B 235=3 Bom L R 893

Suits by and against officers of Court

21 All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, "and all suits whereof the amount or value of the subject matter exceeds one thousand rupees,'‖ may be instituted

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* S 19A has been inserted by the Presidency Small Cause Courts Act, (1 of 1895) s 9

† Act XIV of 1832 But now see Act V of 1908

‡ Act XV of 1877 But now see Act IX of 1908

§ As to additional fee payable on the filing of such agreement, see s 71, *infra*

‖ The words quoted have been inserted by the Presidency Small Cause Courts Act, (I of 1895), s 10

in the High Court at the election of the plaintiff as if this Act has not been passed

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court

22 If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than "one thousand * rupees and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees no cost shall be allowed to the plaintiff,

and, if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court †

Notes —Having regard to clause 12 of the Letters Patent and section 22 of the Act, the High Court has jurisdiction to hear a suit wherein the damage claimed exceeds Rs 1,000 subject to the determination of the question of costs in accord ance with the provis ons of this section last mentioned 11 Bom L R 273=34 B 13=3 Ind Cas 837 By the terms of ... much to extend the powers given to the ... 24 C 399=1 C W N 181; see als ... power to transfer to itself a suit pending ... L R 143 When a suit triable by a Small Cause Court is tried by the High Court and dismissed, the Judge can certify the case as a fit one to be tried by the High Court in which case the provisions of this section do not apply and the Court has got power in a proper case to deprive the successful party of his costs 48 B 531=26 Bom L R 382=80 Ind Cas 766=1924 Bom 422, see also 28 C W N 6 An order as to costs based on a wrong view of s 22 is liable to be set aside on appeal 105 Ind Cas 395, see also 33 C W N 95 This section applies to cases where the sum decreed is within the amount cognizable by Small Cause Court 120 Ind Cas 714

CHAPTER V.

PROCEDURE IN SUITS

23 *Portions of Civil Procedure Code‡ extending to Court* [*Repealed by Act 1 of 1895, s 12*]

No written statement except in cases of set off

24 Except in cases of set off under the Code of Civil Procedure, section 111‡, no written statement shall be received unless required by the Court

Return of ... ted in evid ...

25 ... xpired ... or re ... when ... such period and such application has been refused, or the new trial or rehearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under section 143 of the Code of Civil Procedure ‡ be entitled to receive back the same

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct provided also that no document shall be returned which, by force of the decree, has become void or useless

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt book to be kept for the purpose

* ... e words, "two thousand" by the ...

... [1908

Notes —As regards High Court's power to interfere in case of commission to consider material evidence, *vide* 35 C W. N. 1242

26 In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion, order the plaintiff to pay to the defendant, by way of satisfaction for [illegible] of the Code [illegible] its discretion order the person preferring or making such claim or objection to pay to the decree holder or to the judgment debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit

Compensation payable by plaintiff to defendant in certain cases

And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit, and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court

27 Whenever the Small Cause Court issues a warrant for the arrest of a judgment debtor or the attachment of his property, the decree holder or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment debtor or the property to be attached, as the case may be

Decree holder to accompany officer executing warrant

28 When the judgment debtor under any decree of the Small Cause Court is a tenant of immovable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree "and for the purposes of deciding all questions arising in the execution of such decree" † be deemed to be movable property and may, if sold in such execution, be served by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment debtor would have been bound to do to it if he had removed such thing

Things attached to immovable property and removable by tenant to be deemed movable in execution

Notes —The words 'for the purposes of the execution of such decree' in this section of the Presidency Small Cause Courts Act only mean that as between the judgment debtor and the judgment creditor property of this particular class (*i e*, tiled huts) shall for the purposes of execution be deemed movable 4 C W N 470 This section is applicable when judgment debtor is tenant of immovable property attached 59 C 1092

29 Whenever any judgment debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released

Discharge of judgment debtor on sufficient security

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments the amount of any instalment thereof, it

Court may in certain cases suspend execution of decree

* Act XIV of 1882 But now see Act V of 1908

† Certain words after this have been inserted by Act IV of 1906

may from time to time for such time, and upon such terms as it thinks fit, suspended the execution of such decree and discharge the debtor or make such order as it thinks fit

Execution of decree of Small Cause Court by other Courts

31 If the judgment debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, movable property sufficient to satisfy the decree the Court may, on the application of the decree holder, sent the decree for execution—

(*a*) in the case of execution against immovable property situate with such local limits—"to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be ,' *

(*b*) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment debtor, or any movable or immovable property of such judgment debtor, may be found

Procedure when decree transferred

The procedure prescribed by the Code of Civil Procedure † for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases

Clause (b)—*Vide* 14 C W N 662=6 Ind Cas 97=37 C 574, 28 C L J 264=41 Ind Cas 815, 26 S L R 91, 59 C 827

Minors may sue in certain cases as if of full age

32 Notwithstanding anything contained in the Code of Civil Procedure† as applied by this Act, any minor may institute a suit for any sum of money not exceeding five hundred rupees which may be due to him under section 70 of the Indian Contract Act, 1872,‡ for wages or piece work or for work as a servant in the same manner as if he were of full age

Notes—' We have in this section restored section 31 of Act (X of 1850) which allows minors to sue for a sum not exceeding Rs 500 due for wages, or piece work or work for as servants as if they were of full age, but we have to prevent mistake expressly limited it to cases where such money is due under section 70 of the Contract Act the only law we believe under which a minor can now acquire a right for such money' — [illegible]

Power to [illegible] cial duties

33 [illegible] he Code of Civil Proce[illegible] Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf

The High Court may, from time to time by rule declare what shall be deemed to be non-judicial and quasi judicial acts within the meaning of this section §

Registrar to hear and determine suits like a Judge

34 The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manne in all respects as a Judge of the Court mightr hear and determine the same

Proviso

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar

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* In cl (*a*) of s 31 the words quoted have been substituted for the words "to the High Court" by the Madras City Civil Courts Act, (VII of 1892) s 12

† Act XIV of 188[illegible], Ch XIX But now see Act V of 1908

‡ Act IX of 1872

§ For rules in Madras declaring certain duties to be non judicial or quasi judicial acts which may be done by the Registrar of the Small Cause Court see Madras List of Local Rules and Orders Vol I, Ed 1898 p 204

Registrar may execute all decrees with the same powers as a Judge

35 The Registrar may receive applications for the execution of decrees of any value passed by the Court and may commit and discharge judgment debtors, and make any order in respect thereof which a Judge of the Court might make under this Act

Decrees and orders of Registrar to be subject to new trial as if made by a Judge

36 Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court

Notes — The only other amendment we have to notice in the chapter relating to procedure is the insertion of certain sections (34 to 36) providing for the jurisdiction which may be conferred on the Registrar under section 14 —*First Report of the Select Committee*

CHAPTER VI*

New Trials and Appeals

General finality of decrees and orders of Small Cause Court

37 Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive

Notes — We have introduced ... for a new trial and certain additio... of a value above Rs 500 reheard ...

... he amendment of he Act by s 12 of Act I of 18o ...

to a Presidency Small Causes Court is a revisional and not an appellate jurisdiction 24 C 435=1 C W N 44 2 L W 719=18 M L T 254=(1915) M W N 907 A Small Cause Court Judge referred the suit to arbitration and an award was passed *Held* that an application to the Full Bench was maintainable 24 L W 76—95 Ind Cas 442=1927 M W N 772=A I R 1926 Mad 878

New trial of contested cases

38 Where a suit has been contested the Small Cause Court may on the application of either party made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure),* order a new trial to be held, or alter, set aside or reverse the

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* Ch VI has been substituted for the one originally enacted by the Presidency Small Cause Courts Act, (1 of 1895) ...

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter c [illegible] Small Cause Court for a summons ag [illegible] show cause, on a day therein appointed [illegible] eliver up the property

Notes — This section applies to the suit brought by a mortgagee to eject the mortgagor from the mortgaged property even though no actual relation of landlord and tenant is created between them 1 Bom L R 860 But the Small Cause Court has no jurisdiction to entertain a suit under this section where the plaintiff does not claim through the mortgagee 3 Bom L R 456=26 B 82 A sub tenant is an occupant within the meaning of this section 49 B 685=27 Bom L R 938=89 Ind Cas 881

Service of summons

42 The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

Order for possession

43* If the occupant does not appe [illegible] cause to th [illegible] Small Cause [illegible] to apply under section 41, be entitled to [illegible] Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order

Explanation — If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application he shall be deemed to have shown cause within the meaning of this section

Such order to justify bailiff entering on property and giving possession

Bar to proceedings against Judge or officer for issuing, &c., order or summons

44 Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant, and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served for the issue, execution or service of any such order or summons by reason only that the applicant was not entitled to the possession of the property

Applicant if entitled to possession, not to be deemed trespasser for any error in proceedings

Occupant may sue for compensation

45 When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property neither he nor any person acting in his behalf shall be deemed on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser, but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity

when no such damage is proved, the suit shall be dismissed, and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees the Court shall award to the plaintiff no more costs than compensation unless the judge who tries the case certifies that in his opinion full costs should b awarded to the plaintiff

* Sections 41 and 43 have been virtually amended and supplemented in the City of Madras by Madras Act III of 1922

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this Chapter from a suit by any person deeming him self aggrieved thereby when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property

Liability of applicant obtaining order when not entitled

And when the applicant was not at the time of applying for any such order as aforesaid entitled to the possession of such property the application for such order, though no possession is taken thereunder shall be deemed to be an act of trespass committed by the applicant against the occupant

Application for order in such case an act of trespass

47.* Whenever on an application being made under section 41 the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned to institute without delay a suit in the High Court against the applicant, for compensation for trespass and to pay all costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant the Small Cause Court shall stay the proceedings on such application until such suit is disposed of

Stay of proceedings on occupant giving security to bring suit against applicant

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43

Nothing contained in section 22 shall apply to suits under this section

Notes—*Vide* 4 L W 402 There is nothing in this section to warrant the interpretation that the application for stay should be made at an early stage in the proceedings 44 M L J 386=17 L W 179=72 Ind Cas 154

48 In all proceedings under this Chapter, the Small Cause Court shall as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure †

Proceedings to be regulated by Code of Civil Procedure

49.* Recovery of the possession of and immovable property under this Chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto

Recovery of possession no bar to suit to try title

Notes—The words 'suit for trying the title to the property' occurring in this section include a suit in which any title whether of a full owner or of a holder of a limited right which is alleged by the party aggrieved by the said ejectment order has to be adjudicated upon 4 L W 402

CHAPTER VIII

DISTRESSES

50 This chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William Madras and Bombay

Local extent of Chapter

But nothing contained in this Chapter applies—

Saving of certain rents

(*a*) to any rent due to Government

(*b*) to any rent which has been due for more than twelve months before the application mentioned in section 53

* Sections 47 and 49 have been amended in their applications to the Presidency town of Madras by section 2 (b) of Madras Act III of 1927

† Act V of 1908

51 The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this Chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them

Appointment of bailiffs and appraisers

52 The persons so appointed shall give security to be approved by the said Judges faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code

Security to be given by appointees

53 Any person claiming to be entitled to arrears of rent of any house or premises to which this Chapter extends or his duly constituted attorney, may apply to any Judge of Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned

Application for distress warrant.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed

54 The Judge or Registrar may thereupon issue a warrant under his hand and seal, and returnable within six days, to the effect of the form (marked B) contained in the same schedule, addressed to any one of such bailiffs

Issue of distress warrant

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same

Time for distress

55 Every distress under this Chapter shall be made after sunrise and before sunset, and not at any other time

56 The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling house, the outer door of which may be open, and may break open the door of any room in such dwelling house for the purpose of seizing property liable to be seized under this Chapter

What places bailiff may force open

Provided that he shall not enter or break open the door of any room appropriated for the zanana or residence of women, which by the usage of the country is considered private.

57. In pursuance of the warrant aforesaid, the bailiff shall seize the movable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress :

Property which may be seized

Provided that the bailiff shall not seize—

(a) things in actual use , or

(b) tools and implements not in use where there is other movable property in or upon the house or premises sufficient to cover such amount and costs , or

(c) the debtor s necessary wearing apparel , or

(d) goods in the custody of the law

58 The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Impounding distress

59 On seizing any property under section 51 the bailiff shall make an inventory of such property and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises

Inventory

Notice of intended apprisement and sale

The bailiff shall, as soon as may be file in the Small Cause Court copies of the said inventory and notice

Copies of inventory and notice to be filed

60. The debtor or any other person alleging himself to be the owner of any property seized under this Chapter, or the duly constituted attorney of such debtor or other person may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just,

Application to discharge or suspend warrant

and any of the judges of the said Court may, in his discretion give reasonable time to the debtor to pay the rent due from him

Upon any such application the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge and shall be paid as he directs

Notes —Application under s 60 does not bar steps for establishing title 59 C 311=36 C W N 530=138 Ind Cas 96

61 If any claim is made to, or in respect of any property seized under this Chapter, or in respect of the proceeds or value thereof by any person not being the debtor, the Registrar of the Small Cause Court upon the application of the bailiff who seized the property may issue a summons calling before the Court the claimant and the person who obtained the warrant

Claims to goods distrained made by a stranger

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit

and such order shall be enforced as if it were an order made in a suit brought in such Court

The procedure in Small Cause Courts in cases under this section shall conform as far as may be, to the procedure in an ordinary suit in such Courts

62 In any case under section 60 or section 61 the Judge by whom the case is heard may award such compensation by [illegible]

Power to award compensation to debtor

and r[illegible]

and [illegible]

any suit [illegible]

63 [illegible]

Power [illegible] Court cases involving more than one thousand rupees

the applicant or claimant may apply to the High Court to transfer the case to itself and the High [illegible]

the case should be disposed [illegible] accordingly and may thereup[illegible]

by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit

Every application under this section shall be made within seven days from the date of the seizure of the subject matter in dispute

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction, and orders made under this section may be executed as if they were made in the exercise of such jurisdiction, and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made

Appraisement

Notice of sale

64 In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this Chapter, appraise the property so seized and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section

Sale

Applications of proceeds

65 In default of any such order to the contrary the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt, and the surplus, (if any) shall be returned to the debtor

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned

Costs of distresses

66 No costs of any distress under this Chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient

Amount of costs and proceeds

67 The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this Chapter.

Bar of distresses except under this Chapter

Penalty for making illegal distresses

68 No distress shall be levied for arrears of rent except under the provisions of this chapter,

and any person, except a bailiff appointed under section 51, levying or attempting to levy any such distress shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees, and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings

CHAPTER IX

REFERENCE TO HIGH COURT

Reference when compulsory

69* "(1) If two or more Judges of the Small Cause Court sit together in any suit or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits or

if in any suit or in any such proceeding in which the amount or value of the subject matter exceeds five hundred rupees any such question arises upon which the Court entertains reasonable doubt and either party so requires

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion or on which doubt is entertained and refer such statement with its own opinion on the point for the opinion of the High Court, and the provisions of sections 619 to 621 of the Code of Civil Procedure† shall so far as they are applicable, be deemed to apply as if such reference had been made under section 617 of the said Code †

(2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1) it shall either reserve judgment or give judgment contingent upon such opinion"

Notes—*This section enables the Small Causes Court to make a reference to* the High Court on any question of law, or usage having the force of law or the construction of document, but not on any question of fact 2 Bom L R 469, 17 Ind Cas 93, 30 C 458 The Presidency Small Cause Court ought not to make general indefinite references to the High Court under this section The case stated *must relate to point of law or usage having the force of law, and the question* referred must be precise Otherwise the High Court would send back the reference for amendment 15 B 376 The language of this section shows that the party requiring the Judge to make a reference to the High Court must do so before the Judge has delivered his judgment as it gives the Judge the option, on being required, either of postponing his judgment or delivering it contingent on the opinion of the High Court 16 B 618 The refusal of a new trial subject to the opinion of the High Court on certain points referred to it is not a 'contingent judgment under this section 11 C 298 The conditions of this section ought to be strictly complied with, before the High Court can give opinion on the matter referred 30 C 458 The Presidency Small Cause Courts having jurisdiction to try questions of title which arise incidentally in a suit before it It may also try such a question where it is the principal question But it ought not to try such a question where that is the sole and the only point in the suit 31 C 1001 The question whether a cheque has been presented within a reasonable time has to be determined with regard to the nature of the instrument the usage of trade and of banker and the facts of the particular case Such a question is clearly a question of fact and not of law, and it is not therefore a question which the Small Cause Court can refer to the opinion of the High Court under the section 4 M L T 89

state on such facts on what questions
individual opinion on the view of those
each Judge himself (1915) M W N

* Section 69 has been substituted by Act IV of 1906
† Act XIV of 1882 But now see Act V of 1908

Security to be furnished on such reference by party against whom contingent judgment given

70 When judgment is given under section 69 contingent upon the opinion of the High Court the party against whom such judgment is given shall at once furnish security to be approved by the Small Cause Court for the costs of the reference to the High Court and for the amount of such judgment

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court and the same has been paid accordingly

If no such security given party to be deemed to have submitted to judgment

[illegible] to the same

Notes—Where a judgment is given contingent on the opinion of the High Court on a point to be referred to the latter, and the party at whose instance the contingent judgment is given and the reference is made, fails to deposit the security 'at once' the reference will be liable to be dismissed 28 C 760 The last clause of this section means that the judgment becomes final and conclusive save as provided by Ch VI 23 C 967

CHAPTER X

Fees and Costs

Institution fee

71 * A fee not exceeding—

(*a*) when the amount or value of the subject matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(*b*) when the amount or value of the subject matter exceeds five hundred rupees—the sum of sixty two rupees eight annas and one anna in the rupee on the excess of such amount or value, over five hundred rupees

shall be paid on the plaint in every suit and every application under† section 41, and no such plaint or application shall be received until such fee has been paid

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20

Fees for processes

72 The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject matter exceeds the sums specified in the first column but does not exceed the sum specified in the second column of the said schedule

Repayment of half fees on settlement before hearing

73 Whenever any such suit or proceeding is settled by agreement of the parties before the hearing half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid

Fees and costs of poor persons

74 The Small Cause Court may whenever it thinks fit receive and register suits instituted, and applications under section 41 made by poor persons and may issue processes on behalf of such persons without payment or on a part payment of the fees mentioned in sections 71 and 72

* For modifications with which this section applies in Bengal, *see* s 16 of the Bengal Court fees (Amendment) Act 1922 (Ben Act 4 of 1922)

† In s 71, the words and figures 'section 38 or' repealed by Act VII of 1896 (An Act to amend XV of 1882) s 1, have been omitted

Power to vary fees

75 The Local Government may from time to time by notification in the official Gazette vary the amount of the fees payable under sections 71 and 72

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections

Expense of employing legal practitioners

76 The expense of employing an advocate vakil attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act in the Small Cause Court in which suit or proceeding the amount or value of the subject matter does not exceed twenty rupees unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable

Notes —"We confined this section which prevents the fees of a legal practitioner being recovered as costs unless his employment is held to be reasonable to cases where the amount or value in dispute is less than Rs 20 We do not see why in cases where *the larger amount is at stake the ordinary rule as to allowing costs* should not apply —*First Report of the Select Committee*

Section 3 5 and 25 of Court Fees Act 1870 saved

77 [illegible] shall [illegible] of the [illegible]

CHAPTER XI

Misconduct of Inferior Ministerial Officers

Power to fine officers

78 The Chief Judge may by order fine in an amount not exceeding one month s salary any clerk bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office and such fine may be deducted from his salary

Default of bailiff or other officer in execution of order or warrant

79 If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant loses by neglect connivance or omission an opportunity of executing such order or warrant he shall be liable by order of the Chief Judge on the application of the person injured by *such neglect connivance or omission to pay such sum not exceeding* in any case the sum for which the said order or warrant was issued as in the opinion of the Chief Judge represents the amount of the damage sustained by such person thereby

Extortion or default of officers

80 If any clerk bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process or *with not duly* paying or accounting for any money levied by him under its authority the Court may inquire into such charge and may make such order for the repayment or payment of any money so extorted or of any money so levied as aforesaid and of damages and costs by such officer as it thinks fit

Court empowered to summon witnesses &c

81 For the purposes of any inquiry under this Chapter the Small Cause Court shall have all the powers of summoning and *enforcing* the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act

* Act VII of 1870

Enforcement of order

82 Any order under this Chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour

CHAPTER XII

CONTEMPT OF COURT

83 *Repealed by Act 10 of 1914*

84 *Repealed by Act 10 of 1914*

85 *Repealed by Act 10 of 1914*

86 *Repealed by Act 10 of 1914*

Imprisonment or committal of person refusing to answer or produce document

87 If any witness before the Small Cause Court refuses to answer such questions as are put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment or commit him to the custody of an officer of the Court for any term not exceeding seven days unless in the meantime such person consents to answer such questions or to produce such document, as the case may be after which in the event of his persisting in his refusal he may be dealt with according to the provisions of section 480 or section 482 of the Code of Criminal Procedure 1898 * †

Appeal from orders under sections 83 and 87

88 Any person deeming himself aggrieved by an order under ‡ section 87 may appeal to the High Court and the provisions of the Code of Criminal Procedure, 1898† relating to appeals shall, so far as may be apply to appeals under this section

CHAPTER XIII

MISCELLANEOUS

Persons by whom process may be served

89 Notices to produce documents, summonses to witnesses and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf

Registers and returns

90 The Small Cause Court shall keep such registers books and accounts, and submit to the High Court such statements and returns as may, subject to the approval of the Local Government, be prescribed by the High Court

Court to furnish records, &c, called fo by Local Government or High Court

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit

Holidays and vacations

92 The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court and shall submit the same for the approval of the Local Government

* See now Act V of 1898, Chap XXXV and s 3(1)
† Words within quotations have been substituted by Act 10 of 1914
‡ Certain words after this have been omitted by Act 10 of 1914

Such list, when it has received such approval shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly

Notes —The notification for the midsummer vacation of 1921 for the Presidency Small Cause Court at Madras drawn up under section 92 of the Act provided in paragraph 5 that "plaints execution proceedings and other papers will be received [illegible]

words

1 vaca

9 46 M

93 The Governor General and Members of his Council, the Governors of Fort St George, "Bombay and Fort William in Bengal"* and the Members of their respective councils† and the Chief Justices and Judges of the High Courts established under the twenty fourth and twenty fifth of Victoria Chapter 104,‡ shall not be liable to arrest by order of the Small Cause Court

Certain persons exempt from arrest by Court

94 No suit shall lie on any decree of the Small Cause Court

No suit to lie upon decree of Court

95 Any person ordered by the Small Cause Court to be imprisoned, may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf

Place of imprisonment

96 If any person against whom any suit is brought for anything purporting to be done by him under this Act has before the institution of the suit tendered sufficient amends to the plaintiff, the plaintiff shall not recover

Tender in suit for anything done under Act

97 All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed

Limitation of prosecutions

THE FIRST SCHEDULE

(See section 2)

ENACTMENT REPEALED

A—Charters of the Supreme Courts

Date		Extent of repeal
26th March, 1774	Charter of the Supreme Court at Fort William	Clause 21
26th December 1800	Charter of the Supreme Court at Madras	Clause 47
8th December 1823	Charter of the Supreme Court at Bombay	Clause 59

B—Acts of the Governor General in Council

Number and year	Subject or short title	Extent of repeal
IX of 1850	For the more easy recovery of small debts and demands in Calcutta Madras and Bombay	So much as has not been repealed
XX of 1857	To Amend Act IX of 1850	The whole

* The words within quotations have been substituted by Act 7 of 1912
† Certain words after this have been omitted by Act 7 of 1912
‡ The Indian High Courts Act 1861

Number and year	Subject or short title	Extent of repeal
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of those Courts	So much as has not been repealed
I of 1875 ..	To regulate Distresses for Rents in the Presidency towns *	The whole

C—Act of the Governor of Bombay in Council

VI of 1864	For the better regulation of the diet money of persons imprisoned by the Bombay Court of Small Causes	So much as has not been repealed

THE SECOND SCHEDULE

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT

[Repealed by Act I of 1895, s 12]

THE THIRD SCHEDULE

FORMS

A

(See section 53)

In the Small Cause Court for

A B (Plaintiff)

versus

C D (Defendant)

A. B of , in the town of , maketh oath [*or* affirms] and saith that *C D* , of , is justly indebted to in the sum of Rs for arrears of rent of the house and premises No , situated at in the town of , due for months to wit, from to at the rate of Rs per mensem

Sworn [*or* affirmed] before me the day of 18

Judge [or Registrar]

B

(See section 54)

In the Small Cause Court for

FORM OF WARRANT

I hereby direct you to distrain the movable property of *C D*, on the house and premises situate at No , in the town of , for the sum of Rs and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882

Dated the day of 18

(Signed and sealed)

To *E F Bailiff and Appraiser*

C

(See section 59)

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE

(State particulars of property seized)

Take notice that I have this day seized the movable property contained in the above inventory for the sum of Rs, being the amount of month's

* Certain entry after this repealed by Act 12 of 1927 has been omitted

rent due to *A. B* at last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882 Dated the day of 18 , (Signed) *E F.*

To *C. D* *Bailiff and Appraiser*

D

(*See section 64*)

In the Small Cause Court for

Take notice that we have appraised the movable property seized on the day of , under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [*or* upon on your behalf *as the case may be*] under date the , and that the said property will be sold on the [*two clear days atleast after the date of the notice*] at pursuant to the provisions of the said Act Dated this day of 18

(Signed) *E F*,
G H.,

To *C D* *Bailiffs and Appraisers*

E

[*See section 66*]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE RENT

Sums sued for			Affidavit and warrant to distrain			Order to sell			Commission			Total		
Rs.		Rs.	Rs	A	P	Rs	A	P	Rs	A	P	Rs	A	P
1	and under	5	0	4	0	0	8	0	0	8	0	1	4	0
5	„	10	0	8	0	0	8	0	1	0	0	2	0	0
10	„	15	0	8	0	0	8	0	1	8	0	2	8	0
15	„	20	0	8	0	1	0	0	2	0	0	3	8	0
20	„	25	0	12	0	1	0	0	2	8	0	4	4	0
25	„	30	1	0	0	1	0	0	3	0	0	5	0	0
30	„	35	1	0	0	1	0	0	3	8	0	5	8	0
35	„	40	1	0	0	1	8	0	4	0	0	6	8	0
40	„	45	1	4	0	2	0	0	4	8	0	7	12	0
45	„	50	1	8	0	2	0	0	5	0	0	8	8	0
50	„	60	2	0	0	2	0	0	6	0	0	10	0	0
60	„	80	2	8	0	2	8	0	6	8	0	11	8	0
80	to	100	3	0	0	3	0	0	7	0	0	13	0	0
Upwards	of	100	3	0	0	3	0	0	7 per centum			......		

The above scale includes all expenses except in suits where the tenant disputed the landlord's claim and witnesses have to be subpœnaed in which case each subpœna for sums under Rs 40 must be paid for at four annas each, and twelve annas above that amount ; and also where peons are kept in charge of property distrained, four annas per day must be paid per man

THE FOURTH SCHEDULE

(See section 72).

FEES FOR SUMMONSES AND OTHER PROCESSES

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses			Fee for other processes		
Rs	Rs	Rs	A	P	Rs	A	P.
0	10	0	2	0	0	2	0
10	20	0	4	0.	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	6	0	10	8	0
1,100	1,200	3	8	0	11	0	0
1,200	1,300	3	10	0	11	8	0
1,300	1,400	3	12	0	12	0	0
1,400	1,500	3	14	0	12	8	0
1,500	1,600	4	0	0	13	0	0
1,600	1,700	4	2	0	13	8	0
1,700	1,800	4	4	0	14	0	0
1,800	1,900	4	6	0	14	8	0
1,900	2,000	4	8	0	15	0	0

THE PRESIDENCY TOWNS INSOLVENCY ACT, 1909.

ACT NO III OF 1909

RECEIVED THE G G'S ASSENT ON THE 12TH MARCH, 1909

An Act to amend the Law of Insolvency in the Presidency-towns and the Town of Rangoon

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency towns and the "towns of Rangoon and Karachi;"* It is hereby enacted as follows.—

Notes.—In Insolvency Proceedings unless an order is made to the contrary, only half the attoreny's fees should be allowed as costs whether or not the costs are made payable out of the estate 44 M. L J 411=17 L W 350=32 M. L. T (H. & C) 72=1923 Mad. 481.

PRELIMINARY.

Short title and commencement

1. (1) This Act may be called the Presidency-towns Insolvency Act, 1909

(2) It shall come into force on the first day of January, 1910.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "creditor" includes a decree holder;

* Inserted by Act IX of 1926

(*b*) "debt" includes a judgment debt, and "debtor" includes a judgment-debtor;

*[(*bb*) "judge" includes as Judicial Commissioner and an Additional Judicial Commissioner ,]

(*bbb*) "limits of the ordinary original civil jurisdiction," means, in respect of the 'Chief Court of Sind," the limits of the Municipal District of Karachi as from time to time constituted under the Bombay District Municipal Act, 1901, the Port of Karachi, the Cantonments of Karachi and Manora, and any area within the original civil jurisdiction of the said Court notified in this behalf by the Local Government ,

(*c*) "official assignee" includes an acting official assignee "and a deputy official assignee, whether permanent or acting,"†

(*d*) "prescribed" means prescribed by rules ,

(*e*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit ,

(*f*) "rules" means rules made under this Act ,

(*g*) "secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land ,

(*h*) "the Court" means the Court exercising jurisdiction under this Act ; and

(*i*) "transfer of property" includes a transfer of any interest therein and any charge created thereon

Creditor —A *benamidar* is not entitled to claim as a creditor in the insolvency The persons who really advanced the moneys should come forward and prove their claims before the Court 20 C W N 995

Clause (e) —Property is that property only over which a person has absolute and unconditional power of disposal 52 I A 22=22 A L J 85=84 Ind. Cas 883=27 Bom L R. 135=29 C W N 797=A I R 1925 P C 18=45 M L J 857 (P C)

Clause (g) —The definition of "secured creditor" given in the English Bankruptcy Act, may be adopted in interpreting the Indian Act 117 Ind Cas 440=53 Bom 290=31 Bom L R 35 Creditor claiming lien is secured A I R 1933 Sind 355

PART I

CONSTITUTION AND POWERS OF COURT

Jurisdiction.

Courts having Jurisdiction in insolvency

3 The Courts having jurisdiction in insolvency under this Act shall be—

(*a*) the High Courts of Judicature at Fort William, Madras [Bombay and Rangoon]‡ and

(*b*) [The Chief Court of Sind] §

Notes —This section makes the High Court the only Court competent to exercise Insolvency jurisdiction. 22 L W 362=A I R 1925 Mad 243

Jurisdiction to be exercised by a single Judge

4 All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court and the Chief Justice or [Chief Judge]‖ shall, from time to time, assign a Judge for that purpose

* Inserted by Act IX of 1926

† Added by Act X of 1930

‡ Substituted by Act IX of 1926, s 5

§ These words are to be read for the words 'Court of the Judicial Commissioner of [illegible] Act 1926 (34 of 1926) comes into force [illegible] ituted by s 2 of the Sind [illegible] e words "Judicial Commis [illegible] ss 5 and 6 of the Insolvency [illegible]

THE FOURTH SCHEDULE

(See section 72)

FEES FOR SUMMONSES AND OTHER PROCESSES

When the amount or value of the subject matter exceeds	But does not exceed	Fee for summonses			Fee for other processes		
Rs	Rs	Rs	A	P	Rs	A	P
0	10	0	2	0	0	2	0
10	20	0	4	0	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	6	0	10	8	0
1,100	1,200	3	8	0	11	0	0
1,200	1,300	3	10	0	11	8	0
1,300	1,400	3	12	0	12	0	0
1,400	1,500	3	14	0	12	8	0
1,500	1,600	4	0	0	13	0	0
1,600	1,700	4	2	0	13	8	0
1,700	1,800	4	4	0	14	0	0
1,800	1,900	4	6	0	14	8	0
1,900	2,000	4	8	0	15	0	0

THE PRESIDENCY TOWNS INSOLVENCY ACT, 1909.

ACT NO III OF 1909

RECEIVED THE G G'S ASSENT ON THE 12TH MARCH 1909

An Act to amend the Law of Insolvency in the Presidency-towns and the Town of Rangoon

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency towns and the "towns of Rangoon and Karachi,"* It is hereby enacted as follows —

Notes —In Insolvency Proceedings unless an order is made to the contrary, only half the attoreny's fees should be allowed as costs whether or not the costs are made payable out of the estate 44 M L J 411 = 17 L W 350 = 32 M L T (H & C) 72 = 1923 Mad 481

PRELIMINARY

Short title and commencement

1 (1) This Act may be called the Presidency towns Insolvency Act, 1909

(2) It shall come into force on the first day of January, 1910

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) "creditor" includes a decree holder,

* Inserted by Act IX of 1926

(*b*) "debt" includes a judgment debt, and "debtor" includes a judgment-debtor;

*[(*bb*) "judge" includes as Judicial Commissioner and an Additional Judicial Commissioner ,]

(*bbb*) "limits of the ordinary original civil jurisdiction," means, in respect of the 'Chief Court of Sind," the limits of the Municipal District of Karachi as from time to time constituted under the Bombay District Municipal Act, 1901, the Port of Karachi, the Cantonments of Karachi and Manora, and any area within the original civil jurisdiction of the said Court notified in this behalf by the Local Government ,

(*c*) "official assignee" includes an acting official assignee "and a deputy official assignee, whether permanent or acting,"†

(*d*) "prescribed" means prescribed by rules ,

(*e*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit ,

(*f*) "rules" means rules made under this Act ,

(*g*) "secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land ,

(*h*) "the Court" means the Court exercising jurisdiction under this Act , and

(*i*) "transfer of property" includes a transfer of any interest therein and any charge created thereon

The ... claims before the Court ... 995

... which a person has absolute ... L J 85=84 Ind. Cas 883= ... C 18=45 M L J 857 (P C) ... given in the English Bank ... Act 117 Ind Cas 440=53 ... en is secured A I R 1933 Sind 355

PART I

CONSTITUTION AND POWERS OF COURT

Jurisdiction.

Courts having Jurisdiction in insolvency

3 The Courts having jurisdiction in insolvency under this Act shall be—

(*a*) the High Courts of Judicature at Fort William, Madras [Bombay and Rangoon]‡ and

(*b*) [The Chief Court of Sind]§

Notes—This section makes the High Court the only Court competent to exercise Insolvency jurisdiction 22 L W 362=A I R 1925 Mad 243

Jurisdiction to be exercised by a single Judge

4 All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court and the Chief Justice or [Chief Judge]‖ shall, from time to time, assign a Judge for that purpose

* Inserted by Act IX of 1926
† Added by Act X of 1930
‡ ... Judicial Commissioner of ... of 1926) comes into force ... ed by s 2 of the Sind ...

Notes—A Judge of th [illegible] der the provisions of this Act e[illegible] is not competent to determine [illegible] Courts is vested by the Madras Estates Land Act 13 L W 374=61 Ind Cas 991

5 Subject to the provisions of this Act and of rules, the Judge of a Court exercising jurisdiction in insolvency may exercise in chambers the whole or any part of his jurisdiction

Exercise of jurisdiction in chambers

6 (1) The Chief Justice or [Chief Judge]* may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, an officer of the Court appointed by him in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such officer in the exercise of the said powers shall be deemed the order or act of the Court

Delegation of powers to officers of Court

(2) The powers referred to in sub section (1) are the following, namely —

(*a*) to hear insolvency petitions presented by debtors, and to make orders of adjudication thereon;

(*b*) to hold the public examination of insolvents,

(*c*) to make any order or exercise any jurisdiction which is prescribed as proper to be made or exercised in chambers;

(*d*) to hear and determine any unopposed or *ex parte* application

(*e*) to examine any person summoned by the Court under section 36

(3) An officer appointed under this section shall not have power to commit for contempt of Court

Notes—The Registrar in Insolvency has jurisdiction to hear an application for recission under 6 (1) of the Act read with rule 5 of the Calcutta Insolvency Rule of 1910 54 C 858, see also 20 Ch D 318; (1907) 2 K B 166 This section authorises the delegation to an officer of matters set out in sub clause(2) which includes (c) matters to be dealt with in chambers 27 C W N 916=1924 Cal 83 Attorneys [illegible] the Chief [illegible] of the Act [illegible] 421 A [illegible] 8 Cal 50

7 Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities and all other questions whatsoever whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case:

Power of Court to decide all questions arising in insolvency

"Provided that, unless all the parties otherwise agree, the power hereby given shall for the purpose of deciding any matter arising under section 36, be exercised only in the manner and to the extent provided in that section".†

Notes—This section does not apply to cases of estates of deceased persons administered under the Act 97 Ind Cas 224=4 R 157=A I R. 1926 Rang 157, 104 Ind Cas 89 As a general rule the class of proceedings against a mere third person as against whom the official assignee claims no higher title than the insolvent's is not brought in the Insolvency Jurisdiction, though under section 7 the Court has got jurisdiction 30 C. W N 346=93 Ind Cas 834=A. I R 1926 Cal 597; A I R 1933 Sind 260=A I R 1933 Sind 208=143 Ind Cas 205=27 S L R 275 In the case of a fraudulent transfer of property by the official assignee, the Insolvency Court has power under this section and section 36 of the Act to direct the property to be reconveyed to a substituted official assignee 79 Ind Cas 910=1925 Mad 141 Where an insolvent Hindu father before adjudication sold some joint family property for discharging his debts and at the

* Substituted by Act IX of 1926, s 5

† Added by XIX of 1927.

same time mortgaged other property of the family to the purchaser as a security against any loss which he as the purchaser might sustain in case in the insolvent's ... Court had power under ... and binding character of ... J 141=(1922) M. W. N ... 44, see also A I R 1931 Mad 317 The official assignee is entitled to take proceedings by way of motion under s 7 in those cases where he has a money claim against a stranger to the insolvency 118 Ind. Cas 506 (F B) A person examined under this section as a witness can claim all the privilege of a witness examined under the Evidence Act 114 Ind Cas 836 No suit lies to set aside an order passed under this section The proper remedy for the party aggrieved is to appeal against the order 47 Ind C ... oral evidence to test the correctness of th ... to have corroboration to them But the ... make out a case for the order asked for A I R 1934 Cal 125=60 Cal 1367 Court has power to deal with property outside India A I R 1934 Sind 44

Appeals

Appeals in Insolvency

8 (1) The Court may review, rescind or vary any order made by it under its insolvency jurisdiction.

(2) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely —

(*a*) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency and no further appeal shall lie except by leave of such Judge ,

(*b*) save as otherwise provided in clause (*a*), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court

Notes —The Registrar in Insolvency has jurisdiction to pass an order of recission of discharge under this section on the ground that the insolvent has misled the Court 54 C 858 , see also 1928 Cal 50 , 118 Ind Cas 615 Where in an appeal against an order of a Judge of the High Court exercising insolvency jurisdiction, the appellate Court acting under s 22 annulled an order of adjudication on the ground that insolvency proceedings were pending in another British Court, it has also power under s 8 to review, rescind or vary the same, as the order was made in the exercise of its insolvency jurisdiction 46 M L J 589 In insolvency the jurisdiction to annul a prior order under this section is wider than the power to review under C P Code 34 M L T 335 , see also 27 C W N 916=1924 Cal. 83 Art 162, Limitation Act, does not apply to an application to a High Court for a review of a judgment passed by it in its insolvency jurisdiction 118 Ind Cas 615 Application under sub section (1) must be made to the Court which passed the order 33 C W N 21=115 Ind Cas 39 (F B)

Appeal —There is no rule that a person in order to be entitled to appeal must have been a respondent below The test whether the appellant is a person aggrievep for the purpose of this section is entirely independent of the question whether under the particular arrangement represented by section 40 he was or was not entitled to take part in the proceeding 53 C 866=44 C L J 454=99 Ind Cas 736=A I R 1927 Cal 163 An order refusing to issue a commission by a Judge sitting in Insolvency is not appealable under clause 13 of the Rangoon High Court 4 Bur L J 254=3 Rang 605=93 Ind Cas 211 (2)=A I R (1926) Rang 64 Under the ... ned to be person ... isolvency matter ... clause 39 of the ... C 22 L W 362 ... retion to extend ... necessary 29 C ... ry and desirable that in appeals against an order of adjudication notice of the appeals should be

served on the official assignee 29 C W N 884=89 Ind Cas 584=A I R 1925 Cal 1215 An appeal of course lies to the High Conrt from an order of the Registrar [see sec (2) (a), but that must be made within 20 days (see sec 101) -27 C W N 916 Where a creditor seeks to have a person readjudicated insolvent against whom an adjudication order has been made out and has subsequently been annulled the proper procedure is not to appeal against the order of annulment to the Court of Appeals by leave, but to apply to the Insolvency Court for review of the order for annulment under this section 21 Bom L R 190 R 69 of the Insolvency Rules (Madras) does not limit the exercise of the Court s powers under s 8 (1) of the Presidency Towns Insolvency Act A L R 1933 Mad 986

Clause (2) (b) —48 M 514=1925 M W N 110=86 Ind Cas 1031=21 L W 394=A I R 1925 Mad 569; 17 Bom L R 989

PART II

Proceedings from Act of Insolvency to discharge

Acts of Insolvency

Acts of Insolvency

9 A debtor commits an act of insolvency in each of the following cases, namely —

(*a*) if in British India or elsewhere, he makes a transfer of all or subtantially all his property to a third person for the benefit of his creditors generally,

(*b*) if, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors ,

(*c*) if in British India or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ,

(*d*) if with intent to defeat or delay his creditors,—

(i) he departs or remains out of British India ,

(ii) he departs from his dwelling house or usual place of business or otherwise absents himself,

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him ,

(*e*) if any of his property has been sold or attached or a period of not less than twenty one days in execution of the decree of any Court for the payment of money ,

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money

Explanation —For the purposes of this section, the Act of an agent may be the act of the principal even though the agent have no specific authority to commit the act

Notes —The words "acts of insolvenc [illegible]
Cas 877 It is absolutely necessary tha [illegible]
debtor by a creditor on the ground th [illegible]
committed must definitely allege what [illegible]
committed 28 Bom L R 680=A I R [illegible]
not set out in the petition then the petition [illegible]
435=28 Bom L R 677=A I R 1926 Bo [illegible]
is that in order to adjudicate a man [illegible]
be some act which can be definitely b [illegible]
section requires that the act or defaul [illegible]
be a ersonal act or default to the par [illegible]
of [illegible] 16 C W N 738

b) —*Vide* 53 Ind Cas. 175

d)—Under this section where one partner departs from his usual place it is a matter personal to him and the firm cannot be adjudged an

insolvent One man cannot as an agent for another depart from his usual place of business and the departure of one partner is not a constructive departure of the others 75 Ind Cas 203 (2)=1923 Bom 107, 24 Bom L R 861

Clause (e)—Under the section the attachment for more than twenty one days is not a continuing act of insolvency nor is there a repetition of the act of insolvency at the expiration of every period of twenty one days and the act of insolvency contemplated is committed on the completion of the first 21 days 29 Bom L R 1435=A I R 1927 Bom 633 In reckoning the twenty one days, the day on which the attachment is levied is not to be computed *Ibid* Once 21 days have elapsed the act of insolvency is complete and no petition can be founded upon it after the expiration of three months The continuance of the attachment is not a continuing act of insolvency A I R 1931 Cal 246, see also 121 Ind Cas 812 Attachment in execution of an award is not an attachment in execution of a decree, and so is not an act of insolvency 155 Ind Cas 584

[illegible]

leased he commits an act of insolvency 128 Ind Cas 240

Clause (g)—Under [illegible] payment is not enough bu [illegible] pended 40 B 624=96 [illegible] Letter by debtor prayin[illegible] prevailed, does not amount to notice of suspension of payments A L R 1933 Rang 50=A I R 1933 Rang 41=143 Ind Cas 775=11 Rang 96, see also A I. R 1933 Rang 280 The dishonouring of cheques upon perfectly solvent current accounts is suspension of payment A I R 1933 Rang 363

Order of Adjudication

10 Subject to [illegible]

Power to adjudicate [illegible]

and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent

Explanation —The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication

Notes —Presenting petition to recover debt cheaply and expeditiously is an abuse of process of Court and petition should be dismissed 48 M 267=21 L W 136=85 Ind Cas 333=A I R 1925 Mad 199=46 M L J 710 In an adjudication order the exact act of insolvency together with the dates should be carefully particularised 35 C W N 567

Restrictions on jurisdiction

11 The Court shall not have jurisdiction to make an order of adjudication, unless—

(*a*) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction, or

(*b*) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling house or has carried on business either in person or through an agent, within the limits of the ordinary original civil jurisdiction of the Court, or

(*c*) the debtor personally works for gain within those limits, or

(*d*) in the case of a petition by or against a firm of debtors, the firm has carried on business within a year before the date of the presentation of the insolvency petition within those limits

Clause (b) —The words 'has carried on business either in person or through an agent' in cl (b) of s 11 must be interpreted as contemplating business carried on

within the limits of the Court of a debtor either personally or through an agent properly or strictly so called, and under his effective control, but not by general agent who carries on business in his own name for diverse constituents on payment to him of a commission A L R 1933 Sind 323=A I R 1933 Sind 202=144 Ind Cas 885=27 S L R 298

Clause (c) — Works for gain" meaning of—A L R 1933 Mad 986 (?)

Clause (d) —Even after the appointment of a receiver in a partition suit, a business must be deemed to be carried on so long as there are debts undischarged and assets to be got in 48 M 795=22 L W 411=49 M L J 457 Where an application in insolvency is presented against a firm of debtors and not against an individual debtor it is s 11(d) that governs the case as the words in person would strictly be applicable to the case of a firm A L R 1933 Sind 189=A I R 1933 Sind 250=27 S L R 157

Conditions on which creditor may petition

12 (1) A crediter shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees and

(*b*) the debts is a liquidated sum payable either immediately or at some certain future time, and

(*c*) the Act of insolvency on which the petition is grounded has occurred

creditor to the extent of the balance of the date due to him after deducting the value so estimated in the same way as if he were an unsecured creditor

Notes —The term creditor does not include the *benamidar* of a creditor 20 C W N 995 Where an adjudication order was made on a creditor s petition which alleged as acts of insolvency (1) verbal notice of suspension of payment of debt (2) keeping house and concealing himself to avoid his creditors and disposal by debtor of considerable portion of his properties and attempt to dispose of the rest, but no dates were given for any of the acts alleged *Held* the adjudication order was entirely wrong 35 C W N 567

Clause (c) of sub section (1)—The three months required by this clause begins on the expiry of 21 days mentioned in sect on 9 clause (c) 29 Bom L R 1455=A I R 1927 Bom 633

Sub section (2)—*Vide* A I R 1928 Rang 36

Proceedings and order on creditor s petition

13 (1) A creditor s petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts

(2) At the hearing the Court shall require proof of—

(*a*) the debt of the petitioning creditor, and

(*b*) the act of insolvency or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency

(3) The Court may adjourn the hearing of the petition and order service thereof on the debtor

(4) The Court shall dismiss the petition—

(*a*) if it is not satisfied with the proof of the facts referred to in subsection (2), or

(*b*) if the debtor appears and satisfies the Court that he is able to pay his debts or that he has not committed an act of insolvency or that for other sufficient cause no order ought to be made

(5) The Court may make an order of adjudication if it is satisfied with the proof above referred to, or if on a hearing adjourned under sub-section (3) the

debtor does not appear and service of the petition on him is proved, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction

(6) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt

(7) Where proceedings are stayed the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid

(8) A creditor s petition shall not, after presentation, be withdrawn without the leave of the Court

Notes —Under this section if the Court is satisfied about the debt of the

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waived the omission to serve the notice
proceedings under sub-section (6), only
19 Bom L R 365=40 Ind Cas 207
debts is not merely
the result provide suf ... it means that he is not
so embarrassed that ... y way by making legal
tender and dischargi ... A I R 1933 Cal 417
=144 Ind Cas 142=60 C 345

Conditions on which debtor may petition

14* (1) A debtor shall not be entitled to present an insolvency petition unless—

(a) his debts amount to five hundred rupees or

(b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or

(c) an order of attachment in execution of such a decree has been made and is subsisting against his property

(2) A debtor in respect of whom an order of adjudication whether made under this Act or under the Provincial Insolvency Act 1920 has been annulled owing to his failure to apply or to prosecute an application for his discharge shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application as the case may be or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made

Notes —This sub section has been framed in accordance with sub section 2 of section 10 of the Provincial Insolvency Act If an insolvent debtor s adjudication be annulled owing to his failure to apply or to prosecute an application for his discharge

* Old section 14 was re numbered section 14 (1) and sub section (2) was added by Act XI of 1927

the protection order mentioned in section 25 will become inoperative He will no more be protected from being arrested or detained in prison for his debts By this section also he will be further debarred from filing a fresh application without the leave of the Court *Vide also* 49 M 153=97 Ind Cas 706=1926 A I R Mad 912 This sub section appears to be an improvement over section 10 (2) of the Provincial Insolvency Act, 1920 in as mu
bar is applicable even when a
Insolvency Act, 1920 has been
to prosecute an application for his discharge

Proceedings and order on debtor s petition

15 (1) *A debtor's petition shall allege that the debtor is unable to pay* his debts, and, if the debtor proves that he is entitled to present the petition the Court may thereupon make an order of adjudication, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction

(2) A debtor s petition shall not, after presentation, be withdrawn without the leave of the Court

*(3) On the making of the order admitting his petition a debtor shall—

(*a*) *unless the Court otherwise directs, produce all his books of account*, and

(*b*) file such lists of creditors and debtors and afford such assistance to the Court as may be prescribed,

failing which the Court may dismiss his pe ition *

Notes —A debtor has a statutory right to be adjudicated as an insolvent when the conditions laid down in the Act are satisfied 30 C W N 173=94 Ind Cas 793=A I R 1926 Cal 640 A debtor who has been adjudicated insolvent on his own petition cannot even with the leave of the Court withdraw his petition 90 Ind Cas 969=A I R 1925 Rang 351=3 Rang 313 Where the renewal of the notes was alleged to have taken place under circumstances amounting to exercise of undue influence by the creditors an order under section 15 should be made in the ord nary course unless it was clear that there had been an abuse of the process of the Court 18 Ind Cas 544 It is not permissible to a person who has been adjudicated an insolvent to apply to the Insolvency Court for leave to withdraw his petition under section 15 (2) on the ground that he has settled with his creditors 15 Bom L R 748=20 Ind Cas 895 The debtor must be really unable to pay his debts, a mere statement of inability is not enough A I R 1928 Mad 394

Discretionary powers as to appointment of interim receiver

16 The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before an order of adjudication is made, appoint the official assignee to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate posses sion thereof or any part thereof, and the official assignee shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure, 1908, as may be prescribed

Notes —This section corresponds to section 10 (1) of the English Bankruptcy Act, 1883 (46 & 47 Vict c 52) Under th
of a bankruptcy petition the Court may
receiver of the property of the debtor or
immediate possession of the whole or an
also A B C & Co (1900) 2 Q B 429

Effect of order of adjudica tion

17 On the making of an order of adjudication the property of the insolvent, wherever situate shall vest in the official assignee and shall become divisible among his creditors and thereafter except as directed by this Act, no creditor to whom the insolvent is indebted in

* Added by Act XIX of 1927

respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding except with the leave of the Court and on such terms as the Court may impose.

Provided that this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed

Notes—With regard to the immovable properties of an insolvent which are situate in a foreign country the law is that any creditor British or alien may retain any payment which he can obtain out of the non-British immovables of a bankrupt or company being wound up and if it is only partial may receive dividends in the bankruptcy or winding up on the residue of the debt *pari passu* with the other creditors So far as movable property is concerned, the principle is that a creditor who after the commencement of an English bankruptcy and not by virtue of any charge prior to the bankruptcy or of a judgment *in rem* obtains payment out of the bankrupt's movables in a non-British country must account for such payment if he seeks to receive dividends on the residue if any of his debt but, may otherwise retain it and this whether or not the payment was obtained by legal proceeding or whether or not the title of the trustees in bankruptcy was asserted in such proceedings if any, but that if he is a British creditor and obtains payment out of bankrupt's movables in a non British country, he must pay over the amount to the trustees in bankruptcy whether or not he seeks to receive dividends on the residue if any of his debt Where however by the law of the foreign country a

...nent out of movable pro-
assignee 43 C L J
ncy of a co parcener the
vest in official assignee

52 I A 22=1922 M W N 1=23 A I J 85=29 C W N 797 P C The refusal of discharge to an insolvent is not necessarily a determination of the insolvency proceedings and therefore a suit against an insolvent, after adjudication and after such refusal is also barred by this section 2 Rang 643=84 Ind Cas 909=A I R

prohibiting the conti
the adjudication order
against the property
25 Rang 305 Pro
29 O W N 797 (P

adult and minor sons, the adult sons alone
vesting of the shares of the minor sons in
power to deal with their shares under this section 34 M L J 335=19.. Ind 791 A secured creditor can claim interest at the contract rate beyond the date of adjudication of the insolvent and up to the time of realisation 83 Ind Cas 576 This section is not an absolute bar to the creditor's right to institute a suit so as to enable
the creditor to
ings were pen
creditor after
order does no
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...ership must normally follow default or misconduct, ...
roperty of the organisation must cease Under
result in the case of a member who has lost his
that he loses all interest both in the property
In such a case no interest is reserved in the

defaulter's card except to members of the Association who have suffered by his lapse—in the rules sometimes called his creditors—or to the Association itself The defaulting member himself has no interest in the result of the sale provided for under these rules nor can he require a sale to be made Hence the official assignee's claim cannot be maintained under the rules of the Association The provision in

the rules of the Association that the proceeds of sale of the insolvent s card do not enure for the benefit of the general body of his creditors is not contrary to the law of insolvency or to the provisions of s 12 of T P Act By the nature and character of the As ... ber who is expelled from the ... and none that can pass to ... ake place prior to the com ... 3=63 M L J 623=36 C W N 909=A I R 1932 P C 186 (P C)=34 Bom L R 1178=55 C L J 592

18 (1) The Court may at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before any judge or judges of the Court or in any other Court subject to the superintendence of the Court

Stay of proceedings

(2) An order made under sub section (1) may be served by sending a ... ervice of ... of such ... ending

(3) Any Court in which proceedings are pending against a debtor may on proof that an order of adjudication has been made against him under this Act, either stay the proceedings or allow them to continue on such terms as it may think just

Notes—*This section is applicable only to cases where the Judge in the* exercise of insolvency jurisd ct on has already made an order of adjudication It does not enable a Judge of the H gh Court sitting in insolvency to stay insolvency proceedings ... on The ... e of the ... of the ... erinten ... cised by ... ge exer ... wer stay ... R 1927 ... a suit against insolvent in Mofussil A I R 1926 Mad 150 When in execution of a decree the judgment debtor is arrested after adjudication the Court should not order an uncoditional release but direct them under s 18 of the Act read with s 55 C P Code to give security for appearance 3 Rang 187=89 Ind Cas 381 This section does not empower the High Court in its original insolvency jurisdiction to stay insolvency proceedings in a Mof ss l Court 27 Bom L R 1207=49 B 788=A I R 1925 Bom 543, *contra* 90 Ind Cas 1054=22 L W 326 The object of this section is ... insolvency against the insolvent It does not relate to some other insolvency pending in some other Court of another province or in the District Courts of the province itself The other insolvency is not a suit or other proceeding pend ng against the insolvent 24 Bom L R 872=(1921) Bom 390 Section 18 (3) of the Act permits a stay of proceedings in an action which was not pending at the time of order of adjudication It is not limited to suits instituted before the adjudication order was made 18 Bom L R 191=33 Ind Cas 694

Case—26 Ind Cas 421

18A * (1) The Court may, at any time after the presentation of an insolvency petition stay any insolvency proceedings pending against the debtor in any Court subject to the superintendence of the Court, and may at any time after the making of an order of adjudication annul an adjudication against the debtor made by any such Court

Control over insolvency proceedings in subordinate Courts

* *Added by Act X of 1930*

(2) Where an adjudication is annulled under sub-section (1) all sales and dispositions of property and payments duly made and all acts done by the Court whose order is annulled, or by the receiver appointed by it or other person acting under his authority shall be valid but the property vested in such Court or receiver shall vest in the official assignee the Court may make such direction in regard to the custody of such property as it thinks fit

(3) Notice of the order of annulling an anjudication under sub-section (1) shall be published in the local Official Gazette and in such other manner as may be prescribed

Notes—'It has been held by some of the High Courts that section 18 (1) of the Presidency Towns Insolvency Act does not empower a Judge of the High Court sitting in insolvency to stay proceedings pending in respect of the same debtor in a Court subject to the superintendence of the High Court under the Provincial Insolvency Act The need for such a power has been felt particularly in Calcutta where a common practice prevails whereby debtors who have carried on business in

any Court subject to its superintendence in respect of the same debtor It also empowers him to give necessary direction for the administration of the debtor's estate in the High Court —*Notes on Clauses* The High Court has power under the mofussil Court and carrying on further inconvenience will be caused to the debtors and

19. (1) If in any case the Court having regard to the nature of the debtor's estate or business or to the interests of the creditors generally is of opinion that a special manager of the estate or business ought Court may appoint a manager Court may authorize, and to y be entrusted to him by the official assignee or as the Court may direct

Power to appoint special manager

(2) The special manager shall give security and furnish accounts in such manner as the Court may direct, and shall receive such remuneration as the Court may determine

Notes—According to s 12 (1) of the English Bankruptcy Act 1883 (46 & 47 Vict c 52) s 12 (1) an Official Recei

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20 Notice of every order of adjudication stating the name, address and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made and the date of presentation of the petition shall be published in the *Gazette of India* and in the local official Gazette and in such other manner as may be prescribed

Advertisement of order of adjudication

Notes—This section corresponds to English Bankruptcy Act 1883 (46 & 47 Vict, c 52) s 20 (2)

Annulment of adjudication

21 (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full the Court may on the application of any person interested, by order annul the adjudication "and

Power for Court to annul adjudiction in certain cases

the Court may, of its own motion or on application made by the official assignee or any creditor, annul any adjudication made on the petition of a debtor who was by reason of the provisions of sub section (2) of section 14, not entitled to present such petition' *

(2) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court

Notes—On 22 2 1919 the insolvent was adjudicated on his own petition On 12 5 1919 he filed a schedule but failed to apply for his discharge within the time [illegible] was annulled on 9 5 1922 Subsequently [illegible] an insolvent on 21 6 22, and a creditor [illegible] *Held* that the order of adjucation ought [illegible] al 703 On an application by an insolvent for the annulment of adjudication under this section on the ground that the debts of the insolvent have been paid in full it appeared that the insolvent has not paid [illegible]

R 1923 Mad 394

By the amendment of the section by Act XI of 1927, provision is made for the annulment of an order of adjudication, by the Court on its own motion or at the instance of the official assignee or any creditor when any insolvent obtains such adjudication on an application presented without leave of the Court under section 14 (2)

Concurrent proceedings in British Courts

22 Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other British Court whether within or without British India against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon

Notes—Whether or not the Court shall exercise the power given by this section of staying proceedings is entirely one of discretion Where this discretion has been judicially exercised by the primary Court it will not readily be interfered with by a Court of Appeal 53 M L J 114=31 C W N 1602=29 Bom L R 1172=39 M L T 50=104 Ind Cas 8=A I R 1927 P C 162=46 C L J 56 (P C) Under this section the High Court in its original Insolvency jurisdiction is empowered to stay insolvency proceedings in its own Court and not in any other Court 49 B 788=A I R 1925 Bom 543

Proceedings on annulment

23 (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done by the official assignee or other person acting under his authority, or by the Court shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such terms and subject to such conditions (if any) as the Court may declare by order

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* Added by Act XI of 1927

(2) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled as foresaid, the Court may, if it thinks fit, re commit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor is so re committed shall receive such debtor into his custody according to such recommitment and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force [illegible]

[illegible] be published in the [illegible] such other manner as may be prescribed

Notes —The annulment of an adjudication order does not affect the validity of sales and dispositions of property or of payments duly made or acts done by the Official Receiver, trustee or any person acting under their authority, or by the Court, but the property of the debtor vests in such person as the Court may appoint, or where no appointment is made reverts to the debtor for all his estate or interest in it, on such terms and subject to such conditions, if any, as a Court may order *Vide* sections 35 (2) of the English Bankruptcy Act, 1883 (46 & 47 Vict, c 52) In the absence of a special order the debtor would appear to be remitted to his original rights in respect of his property *Bailey* v *Johnson*, (1837) L R 7 Ex Ch 263

Proceedings consequent on order of adjudication.

24 (1) Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form and containing such particulars of and in relation to his affairs as may be prescribed

Insolvent s schedule

(2) The schedule shall be so submitted within the following times namely —

(*a*) if the order is made on the petition of the debtor, within thirty days from the date of the order

(*b*) if the order is made on the petition of a creditor, within thirty days from the date of service of the order

(3) If the insolvent fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the official assignee or of any creditor, make an order for his committal to the civil prison

(4) If the insolvent fails to prepare and submit any such schedule as aforesaid, the official assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed

Notes —Where an insolvent is in attendance in Court as a witness, it is not open to the Court to issue a warrant for his arrest and order his committal to jail merely on the oral application of the official assignee even if it purports to be under section 24 (3) and 34 of the Act 24 Ind Cas 513

25 (1) Any insolvent, who shall have submitted his schedule as aforesaid may apply to the Court for protection, and the Court may, on such application make an order for the protection of the insolvent from arrest or detention

Protection order

(2) A protection order may apply either to all the debts mentioned in the schedule or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit

(3) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled

(4) Any creditor shall be entitled to appear and oppose the grant of a protection order, but the insolvent shall be *prima facie* entitled to such order

on production of a certificate signed by the official assignee that he has so far conformed to the provisions of this Act

(5) The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interest of the creditors

Notes—This section clearly intends that, while an insolvent diligently performs the duties prescribed by the Act he should not be harassed by execution creditors and should not be rendered liable to pressure, whereby one creditor may get undue advantage over another This section does not deprive the Court of its discretion

society has chosen to enforce its claims through the Collector A I R 1930 Sind 263 But refusal of protection order is proper where there has been a failure to produce account books 91 Ind Cas 975

26 (1) At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the official assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof and generally as to the mode of dealing with the property of the insolvent

Meetings of creditors

(2) With respect to the summoning of and proceedings at a meeting of creditors the rules in the First Schedule shall be observed

Notes—The section corresponds to section 15 of the English Bankruptcy Act of 1883 (46 & 47 Vict c 52)

27. (1) Where the Court makes an order of adjudication it shall hold a public sitting on a day to be appointed by the Court, of which notice shall be given to creditors in the prescribed manner, for the examination of ... nd shall be examined as

Public examination of the insolvent

... veniently may be after the schedule

... legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure

... the examination of the insolvent; ... directions as the Court may give,

(5) The Court may put such questions to the insolvent as it may think expedient

(6) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over either to or by the insolvent and signed by him, ... shall be open to the

... e insolvent have been ... his examination is ... om directing further ... do so ... any such mental or ... irt makes him unfit

to attend his public examination or is a woman who according to the customs and manners of the country ought not to be compelled to appear in public the Court may make an order dispensing with such examination or directing that the insolvent be examined on such terms in such manner and at such place as to the Court seems expedient

Notes—If a creditor wants a public examination of the insolvent he should apply before the insolvent applies for discharge 26 Bom L R 627=1924 Bom 512 An application for public examination made after insolvent has applied for his discharge cannot be entertained except in special circumstances 35 C W N 764 The record of insolvent's examination under s 27 is evidence which can be taken into consideration against him in proceedings under s 154 of the Act 113 Ind Cas 851 The deposition of the insolvent taken on his public examination is not admissible against a third party on question of title 93 Ind Cas 834

Composition and schemes of arrangement

Submission of proposal and acceptance by creditors

28 (1) An insolvent may at any time after the making of an order of adjudication submit a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs in the prescribed form and such proposal shall be submitted by the official assignee to a meeting of creditors

(2) The official assignee shall send to each creditor who is mentioned in the schedule or who has tendered a proof before the meeting a copy of the insolvent's proposals with a report thereon and if on the consideration of such proposal the majority in number and three fourths in value of all the creditors whose debts are proved resolve to accept the proposal the same shall be deemed to be duly accepted by the creditors

(3) The insolvent may at the meeting amend the terms of his proposal if the amendment is in the opinion of the official assignee calculated to benefit the general body of creditors

(4) Any creditor who has proved his debt may asssent to or dissent from ficial assignee meeting and been present and had voted at the meeting

Notes—The failure to embody in an order the terms of a proposal for a composition approved by the Court is a mere formal defect which in no way affects the Court's approval of the terms and the consequent annulment of the insolvency 44 M 381=(1911) M W N 281=63 Ind Cas 172 40 M L J 404 The insolvent's estate vests in the Official Assignee and he alone can discharge debts of the insolvent 98 Ind Cas 799

Approval of proposal by Court.

29 (1) The insolvent or the official assignee may after the proposal is accepted by the creditors apply to the Court to approve it and notice of the time appointed for hearing the application shall be given to

acceptance of the proposal

(3) The Court shall before approving the proposal hear a report of the official assignee as to the terms thereof and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor

(4) Where the Court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors or

in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal

(5) Where any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecure

(6) the Court which does not pro of all debts directed to be so paid in the distribution of the property of an insolvent

(7) In any other cause the Court may either approve or refuse to approve the proposal

Sub section (4)—The interest of the creditors is not the sole concern of the Court in question approving schemes of composition, and it is the duty of the Court st of the 27 Rang. any leave binding on the insolvent's creditors 33 Ind Cas 559=8 Bur L T 259=8 L B R 258

30 (1) If the Court approves the proposal, the terms shall be embodied in an order of the Court, and an order shall be made annulling the adjudication, and the provisions of section 23 sub sections (1) and (3), shall thereupon apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the insolvent and provable in insolvency.

Order on approval

(2) The provisions of the composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court

Notes—The acceptance of a scheme of composition operates as a discharge of the insolvent from all debts, which were provable in insolvency but which have not en such a scheme is accepted and is is given by a discharge 92 Ind of allowing an insolvent to adjust settlement to the official assignee illegal 44 M 381=40 M L J 404

is merely enabling and does not exclude the M 521=90 Ind Cas 92=48 M L J 252 t is not exhausted owing to the annulment effect to the scheme it has approved 35 C W N 500

31. (1) If default is made in the payment of any instalment due in pursuance of any composition or scheme, approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, re adjudge the debtor insolvent and annul the composition or scheme, and the property of the debtor shall thereupon vest in the official assignee but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme

Power to re adjudge debtor insolvent

(2) Where a debtor is readjudged insolvent under sub-section (1), all debts provable in other respects which have been contracted before the date of such re adjudication shall be provable in the insolvency

Notes—When a debtor is "adjudicated" or "re adjudicated" or "freshly adjudicated" under this section such adjudication is not independent of the origin al insol-

vency, although no doubt between the date of when the scheme was approved and the date when the debtor is re adjudged an insolvent under this section in respect of the law relating to insolvency, is a free man His legal position is analogous to that of an insolvent who has obtained his discharge, but whose discharge is ultimately cancelled during the period between the date when he obtained his discharge and the date when the discharge is cancelled In either case during that period the debtor is a person *sui juris*, but after the acceptance and approval of the scheme the jurisdiction of the Court continues and the scheme when accepted and approved, operates as a conditional discharge and subject to sub section (2) upon annulment and re adjudication the *status quo ante* is restored In considering whether it ought to readjudge the debtor under this section the Court in the first instance should have regard to the position of the creditor and if the Court is of opinion that the creditors will not be benefited by an order annulling the scheme and re adjudicating the debtor in ordinary circumstances, the Court will not make an order of re-adjudication 105 Ind Cas 90=54 C 650 It follows that where a scheme has been approved and subsequently is annulled and the debtor dies after the scheme has been approved and before it is annulled, s. 93 of the Act applies and notwithstanding the death of the debtor any person interested has a *locus standi* to apply that the debtor be re adjudged an insolvent for the purpose of the further administration in insolvency of the deceased debtor's estate *Ibid* Re adjudication is not independent of original insolvency but is revival of the latter A re adjudication order may be made if it is to the creditor's benefit A I R 1928 Cal 21

Limitation of effect of composition or scheme

32. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition or scheme

Notes—A composition or scheme once approved is binding on all creditors including the Crown, so far as it relates to any debts provable in bankruptcy even in a case where from the nature of his debt the creditor is precluded from receiving a dividend *Seaton* v *Lord L* ... any creditor so far as regard ... would not be discharged by ... the composition or scheme ... 30, see *Debtors Act*, 1869 (3 ... vol II, p 83

Control over person and property of insolvent.

Duties of insolvent as to discovery and realisation of property

33 (1) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the official assignee may require him to attend, and shall submit to such examination and give such information as the meeting may require.

(2) The insolvent shall—

(*a*) give such inventory of his property, such list of his creditors and debtors and of the debts due to and from them respectively,

(*b*) submit to such examination in respect of his property or his creditors,

(*c*) wait at such times and places on the official assignee or special manager,

(*d*) execute such powers of attorney, transfers and instruments, and

(*e*) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors,

as may be required by the official assignee or special manager or may be prescrib... ference ... by the ...

(3) ... of his property and the distribution of the proceeds among his creditors.

(4) If the insolvent wilfully fails to perform the duties imposed upon him by this section or to deliver up possession to the official assignee of any part of his property which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control he shall in addition to any other punishment to which he may be subject be guilty of a contempt of Court and may be punished accordingly

Notes—Having regard to the terms of sub-section 2 (e) there is no need for the official assignee to apply to the Court for an order for the insolvents attendance nor any need for the Co
ly on the insolvent and to conta n a
he would be comm tted for contemp
attend h s office in pursuance of sub
If an order is g ven verbally it s val d and there is duty upon the insolvent to comply there v th 47 C 56=56 Ind Cas 337

34 (1) The Court may either of its own motion or at the instance of the official assignee or of any creditor by warrant addressed to any police officer or prescribed officer of the Court cause an insolvent to be arrested and committed to the civil prison or if in prison to be detained until such time as the Court may order under the following circumstances namely —

Arrest of insolvent

(a) if it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs or of otherwise avoiding delaying or embarras

possession being taken of it by the official assignee or that there is probable reason for believing that he has concealed or is about to conceal or destory any of his property or any books documents or writings which might be of use to his creditors in the course of his insolvency or

(c) if he removes any property in his possession above the value of fifty rupees without the leave of the official assignee

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences

Notes — w tness it is not open
to the Court t mmittal to jail merely
on the oral ap rts to be under ss 24
(3) and 34 of oks the insolvent can
always be dealt w th under the Act It s no reason to send h m to ja l in execut on *of a decree 113 Ind Cas. 854*

35 Where the official assignee has been appointed interim receiver or an order of adjudication is made the Court on the application of the official assignee may from time to time order that for such time not exceeding three months as the Court thinks fit all post letters whether registered or unregistered parcels and money orders addressed to the debtor at any place or places mentioned in the
delivered by the Postal authorities
r otherw se as the Court directs

Redirection of letters

Notes—Th s sect on corresponds to sect on 26 of the Engl sh Bankruptcy Act 1883

36 (1) The Court may on the application of the official assignee or of any creditor who has proved his debt at any time after an order of adjudication has been made summon before it in such manner as may be prescribed the insolvent or any person known or suspected to have

Discovery of insolvent s property

in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property ; and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination

(3) The Court may examine any person so brought before it concerning the insolvent his dealings or property, and such person may be represented by a legal practitioner

(4) 'If on his examination any such person admits' * that he is indebted to the insolvent, the Court may, on the application of the official assignee, order him to pay to the official assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination

(5) 'If on his examination any such person admits'* that he has in his possession any property belonging to the insolvent, the Court may, on the application of the official assignee, order him to deliver to the official assignee that property, or any part thereof, at such time, in such manner and on such terms as to the Court may seem just

(6) Orders made under sub sections (4) and (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908, respectively

(7) Any person making any payment or delivery in pursuance of an order made under sub section (4) or sub section (5) shall by such payment or delivery be discharged from all liability whatsoever in respect of such debt or property

Notes —Ss 36 and 56 of the Act do not apply to cases where the estate of a deceased is being administered in insolvency and a creditor cannot on the official assignee's refusal to take action obtain the leave of the Court and apply to set aside a transfer 5 R 375=104 Ind Cas 80=A I R (Rang) 1927, 284 The answer given by a witness at the private examination under this sec [illegible]

sections 4 and 5 Whoever holds the examination has the power under the sub sections provided it is held by the Court If the examination is ordered to be done by a commissioner, sub sections 4 and 5 are out of action altogether 30 C W N 346 =93 Ind Cas 834=A I R 1926 Cal 597 An application under sub section 5 must be made by the official assignee and not by a creditor 30 C W N 914=A I R 1926 Cal 1097 The provisions of sub sections 4 and 5 are intended to provide a summary procedure for ordering payments of debts due and delivery of property of insolvent where there is no dispute 27 Bom L R 551=88 Ind Cas 77 A Judge of the High Court exercising jurisdiction under this Act has no jurisdiction to determine under this section claims of rent in respect of estates which are exclusively triable by Revenue Courts under the Madras Estates Land Act 29 M L T 112=61 Ind Cas 991 It is doubtful whether an insolvent can be examined under this section 29 C W N 425 The expression 'a creditor who has proved his debt' means a creditor who has merely lodged the necessary proof of his debt A I R 1929 Cal 703=33 C W N 709

37 The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination

Power to issue commissions

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* Substituted by Act XIX of 1927.

under section 36 as it has for the examination of witnesses under the Code of Civil Procedure, 1908

Notes —A similar provision has been made by the English Bankruptcy Rules rule 68

Discharge of Insolvent

38 (1) An insolvent may, at any time after the order of adjudication apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded The application shall be heard in open Court

Discharge of insolvent

(2) On the hearing of the application, the Court shall take into consideration any report of the official assignee as to the insolvents conduct and affairs and subject to the provisions of section 39, may—

(a)

(b)

(c)

any earnings or income which may afterwards become due to the insolvent, or with respect to his after acquired property

Notes —This Act makes no further proceeding necessary after an order of suspension under this section 21 Bom L R 980=53 Ind Cas 627 Where the conduct of the insolvent was very bad and he was not prepared to mend his ways the High Court refused discharge with a direction that he may apply again after 2 years Court should consider interest of the community at large in such cases 133 Ind Cas 231 This section contemplates that an insolvent shall have a right

39 (1) The Court shall refuse the discharge in all cases where the insolvent has committed any offence under this Act, or under sections *421 to 424 of the Indian* Penal Code * and shall, on proof of any of the facts hereinafter mentioned, either—

Cases in which the Court must refuse an absolute discharge

(a) refuse the discharge , or

(b) suspend the discharge for a specified time , or

(c) suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors , or

(d) require the insolvent as a decree being passed against him in balance or part of any balance of which is n balance c property c Court ma leave of the Court, which leave may be given on proof that the insolvent since has discharge acquired property or income available for payment of his debts

* Act XLV of 1860

(2) The facts hereinbefore referred to are—

(*a*) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of such value has arisen from circumstances for which he cannot justly be held responsible,

(*b*) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and has sufficiently disclosed his business transactions and financial position within the three years immediately preceding his insolvency;

(*c*) that the insolvent has continued to trade after knowing himself to be insolvent,

(*d*) that the insolvent has contracted any debt provable under this Act without having, at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it,

(*e*) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet h s liabilities,

[illegible] s insolvency by [illegible] living or by [illegible]

(*g*) that the insolvent has put any of his creditors to unnecessory expense by a frivolous or vexatious defence to any suit properly brought against him,

(*h*) that the insolvent has within three months preceding the time of presentation of the petition incurred unjustifiable expense by bringing a frivolous or vexatious suit,

(*i*) that the insolvent has within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors,

(*j*) that the insolvent has concealed or removed his books or his property or any part thereof or has been guilty of any other fraud or fraudulent breach of trust.

(3) The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently

(4) On any application for discharge the report of the official assignee shall be *prima facie* evidence and the Court may presume the correctness of any statement contained therein

[illegible]

Hearing of application for discharge

40 Notice of the appointment by the Court of the day for hearing the application for discharge small be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee and may also hear any creditor At the hearing the Court may put such questions to the insolvent and receive such evidence as it may think fit

Notes—According to section 8 (6) of the English Bankruptcy Act, a notice of 14 days is to be given A person who has not found a debt or at least tendered a proof of debt is not for the purposes of the exercise of creditor s right in a bankruptcy considered to be a creditor *Ex parte Rylands, Re Chesters,* (1877) 6 Ch D 57

Power to annul adjudication on failure to apply for discharge

41 If an insolvent does not appear on the day so appointed for hearing his application for discharge or if an insolvent shall not apply to the Court for an order of discharge within such time as may be prescribed, the Court, on the application of the official

assignee or of a creditor or of its own motion may annul the adjudication or make such other order as it may think fit and the provisions of section 23 shall apply on such annulment

Notes—This section makes mention of circumstances under which an order of *adjudication is annulled The Registrar in Insolvency has jurisdiction to make the* order of annulment under s 41 83 Ind Cas 840

Renewal of application and variation of terms of order

42. (1) Where the Court refuses the discharge of the insolvent it may, after such time and in such circumstances as may be prescribed, permit him to renew his application

(2) Where an order of discharge is made subject to conditions and at any time after the expiration of two years from the date of the order the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit

Notes—The Court may take into consideration the conduct of the bankrupt since the date of the original order, and may if it thinks that the bankrupt has been sufficiently punished grant an absolute order of discharge *Vide Re Tobias & Co*, (1891) 1 Q B 463 The bankrupt cannot where the discharge is absolutely refused, apply *de novo* as a matter of right *Ibid*

Duty of discharged insolvent to assist in realisation of property

43 A discharged insolvent, shall notwithstanding his discharge give such assistance as the official assignee may require in the realisation and distribution of such of his property as is vested in the official assignee, and, if he fails to do so, shall be guilty of a contempt of Court, and the Court may also, if it thinks fit revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation

Notes—This section corresponds to section 8(8) of the English Bankruptcy Act 1883 (46 & 47 Vict c 52)

Fraudulent settlements

44 In either of the following cases, that is to say —

(1) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, or

(2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor s wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his w fe),

if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement covenant or contract was made in order to defeat or delay creditors or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement

Notes—The onus of proving the transaction to be fraudulent is on the person impeaching it even if the debtor was insolvent at the time and knew himself to be so 4 Bur L J 13=86 Ind Cas 514=A I R 1925 Rang 201

Effect of order of discharge

45 (1) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Crown, or

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, or

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party , or

(d) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898

(2) Save as otherwise provided by sub section (1) an order of discharge shall release the insolvent from all debts provable in insolvency

(evidence of the insolvency and

(any person who at the date of the presentation of the petition was a partner or co trustee with the insolvent or was jointly bound or had made any joint contract with him or any person who was surety or in the nature of a surety for him

Notes —The High Court has jurisdiction to restrain a party within its jurisdiction from proceeding with a suit in foreign Court The principle on which the jurisdiction is exercised is that the Court acts *in personam* and will not suffer any one within its reach to do what is contrary to its notions of equity merely because the act to be done may be in point of locality beyond its jurisdiction An insolvent trading and incurring debts in British India and having property in foreign territory which the

550—22 Bom L R 1173=59 Ind Cas 444

PART III

ADMINISTRATION OF PROPERTY

Proof of debts

Debts provable in insolvency

46 (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency

(2) A person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice

(3) Save as provided by sub sections (1) and (2) all debts and liabilities present or future certain or contingent, to which the debtor is subject when subject before his date of such adjudi

(4) An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies or for any other reason does not bear a certain value

Provided that if in his opinion the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency

Explanation —For the purposes of this section liability includes any compensation for work or labour done any obligation or possibility of an obligation to pay mo each of any express or implied covenant contr whether the breach does or does not occur, or capable of occurring before the discharge of the debtor, and generally it includes any express or implied engagement, agreement or undertaking to pay or capable of resulting in the payment of money, or money s worth, whether the payment is as respects amount fixed or unliquidated as respects time, present or future, certain or dependent on

any contingency or contingencies, as to mode of valuation capable of being ascertained by fixed rules or as matter of opinion

Notes—A surety or an accomodation acceptor is no doubt a contingent creditor who is entitled to prove under section 46 (1) of the Act but he is not a creditor who can be fraudulently preferred under s 56 (*b*) 32 Ind Cas 795 While a father s debt is alive in insolvency any remedy aga nst the sons in insolvency is not barred 54 M =739=131 Ind Cas 481 The prov s ons of s 46 of the Act do not apply to a secured creditor who wants to enforce the security A. L R 1933 Cal 821=37 C W N 973=69 C 1298

Mutual dealings and set off

47 Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account and no more, shall be claimed or paid on either side respectively

Provided that a person shall not be entitled under this section to claim the benefits of any set off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him

Notes—*Vide Beat* v *Jones* (1881) 8 Q B D 147 *Jack* v *Kipping*, (1882) 9 Q B D 113, *Naoroji* v *Chartered Bank of India* (1868) L R 3 C P 444, *Palmer* v *Day & Sons* (1895) 2 Q B D 618 The prov so corresponds to section 38 of the Engl sh Bankruptcy Act 1883 (46 & 47 Vict c 52) s 38 But if on a contract entered into without such not ce there is a liab lity of the bankrupt at the date of the receiving order which [illegible]
Trustee in Bankruptcy of La [illegible]
immaterial that the actual [illegible]
[*Re Rushforth* (1907) 95 L [illegible]
1 Q B 405 S C (1892) 2 Q [illegible]

Rules as to proof of debts

48 With respect to the mode of proving debts the right of proof by secured and other creditors the admission and rejection of proofs, and the other matters referred to in the Second Schedule the rules in that schedule shall be observed

Notes—Where a person has become bankrupt the rights which before the [illegible] his pro [illegible] share [illegible] of the [illegible] (1899) [illegible] re thus entitled are termed movable debts, and the method by which their claims are asserted and established is called proof—*Halsbury*, Vol II p 197 A creditor who lodges a proof should have h s proof dealt with upon such lodgment 70 Ind Cas 507=26 C W N 653

Priority of debts

49 (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

(*a*) all debts due to the Crown or to any local authority,

(*b*) all salary or wages of any clerk servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition not exceeding three hundred rupees for each such clerk and one hundred rupees for each such servant or labourer, and

(*c*) rent due to a landlord from the insolvent provided the amount payable under this clause shall not exceed one month s rent

(2) The debts specified in sub section (1) shall rank equally between themselves, and shall be paid in full unless the property of the insolvent is insufficient to meet them in which case they shall abate in equal proportions between themselves

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property, and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference

(6) Where there is any surplus after payment of the foregoing debts it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency

Notes—Where persons carrying on business in partnership are adjudicated insolvent it is open to the creditors to elect as to which assets they will go against the general assets of the two partners or the separate assets of the one against whom they elect, and they could elect until the very end of the proceedings and only when they have actually received a dividend there is an election 19 L W 46=79 Ind Cas 966=(1924) M W N 164=1924 Mad 595 It is not outside the statutory powers of the Government of India to conduct a soap factory for the purposes of education and demonstration to the people A debt due to such a concern conducted by the Government from an insolvent is a debt due to the Crown and is recoverable in full in priority to other debts of the insolvent under this section 49 M 156=30 M L T 246

Where an accused (a member of a firm declared insolvent) under rights given to him under s 49 (4) of the Act transferred to his wife property in consideration of the private debts owned by him to her, and where the existence of the fraudulent intent requisite for a conviction for an offence under s 103 (b) is not established, no conviction for an offence under that section can stand 16 Cr L J 193=27 Ind Cas 753

Rent due before adjudication

50 After an order of adjudication has been made no distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or party to whom the rent may be due shall be entitled to prove in respect of such rent

Notes—A lessor is allowed to prove in respect of all obligations, past and future of the insolvent company under the lease *Re Panther Lead Co* (1896) 1 Ch 978, see also *Re New Oriental Bank Corporation* (No 2) (1895) 1 Ch 753

Property available for payment of debts

Relation of assignee s title

51 The insolvency of a debtor, whether the same takes place on the debtor s own petition or upon that of a creditor or creditors shall be deemed to have relation back to and to commence at—

(*a*) the time or the commission of the act of insolvency on which an order of adjudication is made against him or

(*b*) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property, and where there is a surplus of the partnership property it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property

(5) Subject to the provisions of this Act all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference

(6) Where t' be applied in pay an insolvent at insolvency

Notes—Where persons carrying on business in partnership are adjudicated insolvent it is open to the creditors to elect as to which assets they will go against the general assets of the two partners or the separate assets of the one against whom they elect, and they could elect until the very end of the proceedings and only when they have actually received a dividend there is an election 19 L W 46=79 Ind Cas 966=(1924) M W N 164=1924 Mad 595 It is not outside the statutory powers of the Government of India to conduct a soap factory for the purposes of education and demonstration to the people A debt due to such a concern conducted by the Government from an insolvent is a debt due to the Crown and is recoverable in full in priority to other debts of the insolvent under this section 49 M 156=30 M L T 246

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Rent due before adjudication

Notes—A lessor is allowed t of the insolvent company under see also *Re New Oriental Bank*

Property available for payment of debts

51 The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors shall be deemed to have relation back to and to commence at—

Relation of assignee's title

(*a*) the time or the commission of the act of insolvency on which an order of adjudication is made against him or

(*b*) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor

Notes —*Vide* 35 M L J 533=24 M L T 455=9 L W 36, 22 C W N 335=46 Ind Cas 196

Description of insolvent's property divisible amongst creditors

52 (1) The property of the insolvent divisible amongst his creditors and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely —

(*a*) property held by the insolvent on trust for any other person,

(*b*) the tools (if any) of his trade and the necessary wearing apparel, bedding cooking vessels, and furniture of himself, his wife and children, to a value, inclusive of tools and apparel and other necessaries as aforesaid, not exceeding three hundred rupees in the whole

(2) Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely —

(*a*) all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge,

(*b*) the capacity to exercise, and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge, and

(*c*) all goods, being at the commencement of the insolvency, in the possession order or disposition of the insolvent, in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof

Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (*c*)

Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (*c*) may prove for the value of such goods

Notes —The word trust, as used in clause (*a*) is not confined to express trusts but includes all kinds of property held by an insolvent in a fiduciary character for example on the footing of a commission agent 5 R 73=102 Ind Cas 389=A I R (1927) Rang 140 But where the goods of a person which were in the custody of the insolvent as a commission agent were destroyed by fire and the commission [illegible] the [illegible] by [illegible] ed [illegible] = A I R 1925 Mad 271 This section has no application to cases of floating charges 20 L W 861

S 52 (1) (a) —Under s 52 (1) (a) of Act property held by an insolvent in trust for any other person is excluded from the assets divisible among the creditors A L R 1933 P C 145=57 C L J 433=37 C W N 713=35 Bom L R 756=A I R 1933 P C 148 (P C)

Sub-section (2) [illegible]
of his sons in the jo [illegible]
gnee But he can do [illegible]
for paying off debts [illegible]
discharge Even if [illegible]
be made first in the decree for such of [illegible]
sons 93 Ind Cas 61?=A I R 1926 [illegible]
insolvency of the managing member [illegible]

succeeds to the undivided interests of the insolvent in the joint property and to his rights as managing member so far as they can be exercised for his own benefit 46 M 54

table interest in property. 19 L W 54

include a person egal title but it ods, they being in ad 207=143 Ind

Effect of insolvency on antecedent transactions.

Restriction of rights of creditor under execution

53 (1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor.

(2) Nothing in this section shall affect the right of a secured creditor in respect of property against which a decree is executed

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the official assignee.

Notes—According to the provisions of the Civil Procedure Code an auction purchaser s title dates from the date of the sale, provided the sale is confirmed by the Court Until confirmation, however, he has an inchoate right which he is entitled gainst the takes the t claim to ieral body

Duties of Court executing decree as to property taken in execution

54 Where execution of a decree has issued against any property of a debtor which is saleble in execution, and before the sale thereof, notice is given to the Court executing the decree that an order of adjudica tion has been made against the debtor, the Court shall, c possession of the Court, to be of the execution shall be a fir official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge

Notes—When the writ or process of execution has not been carried out to complete the property seized or taken under the execution and the fruits of it, so far as they have been realised, pass to the trustee in bankruptcy of the judgment-debtor for the benefit of the general body of creditors *Re Dickinson*, (1888) 22 Q B D 187 Where the execution creditor has received any money or benefit under the incomplete execution, he cannot retain as against the bankruptcy trustee the benefits so received *Re Ford* (1900) 1 Q B 263 *Re Pollock and Pendle*, (1902) 87 L T 238, *Re Jenkins*, (1903) 90 L T 65—*Halsbury*, Vol, 2 p 272.

Avoidance of voluntary transfer.

55 Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is

adjudged insolvent within two years after the date of the transfer, be void against the official assignee

Notes—To bring a case under this section valuable consideration and good faith have to be proved 56 M 918=39 M L T. 374=58 M L J 890=26 L W 665=A I R 1927 Mad 1013 In order to have a transaction set aside under s 55 the official assignee should prove in a sense a double negative, namely, that the transfer was not made in good faith or that it was not made for valuable consideration 60 C. 1278=A I R 1934 Cal 54 The voidability of a transaction by virtue of this section can be gone into only by the insolvency Court and the same cannot be raised ... mortgage executed by the Insolvent 50 M ... =102 Ind Cas 702=38 M L J H C 401= ... 648 Where a special forum is constituted ... that Act must in the absence of any thing to the contrary in the Act or in any other enactment be determined by the forum constituted by that Act so that any question as to the voidability of the transaction in so far as it is raised by the official assignee under the special provisions of that ... which would have ... a person who was ... ourt under rule 18 ... was proceeding ... whether he would ... o was contesting ... nade was that the proceedings under rule 18 should be stayed pending the proceedings taken by the official assignee under s 36 30 C W N 898=143 C L J 219=A I R 1926 Cal. 618=93 Ind Cas 898 In an application under this section the onus of proving that the transfer was in good faith and for valuable consideration is on the transferee 29 C W N 374=87 Ind Cas 392=A I R 1925 Cal 690, see also 2 O W N 221=87 Ind Cas 935=A I R 1925 Oudh 396 An application under ss 55 and 56 of the Act should be made by the Assignee in whom the property of the insolvent is vested If the Official Assignee when asked to take action refuses with the leave of the Court a creditor may make such an application 26 C W. N 803 This section protects all transactions unless they are in themselves acts of insolvency or fraudulent preferences entered into with the debtor by third persons for valuable consideration 43 A. 427=19 A L J 240=62 Ind Cas 732 A mortgagee setting up a mortgage executed by a person within two years of his insolvency must discharge the burden that rests upon him to show that the transaction was executed in good faith and for consideration 39 M L J 345=43 M 739=60 Ind Cas 205

56 (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee

Avoidance of preference in certain cases

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

Notes—This section does not apply to cases where the estate of a deceased is being administered in insolvency and a creditor cannot on the official assignee's ... Court and apply to set aside transfer ... =5 R 375 Until the official assignee ... after his bankruptcy with any person ...

ceedings such acts do not constitute *bona fide* pressure and do not present a transfer by the debtor to the creditor from being an undue preference over other creditors within s 56 of the Act 85 Ind Cas 984=A I R 1923 Cal 631 Once it is established that an assignment by the insolvent to a creditor was fraudulent and void as against the official assignee the onus upon the transferee if he desires to bring himself within s 56 (2) of the Act to show that not only did he give consideration for the assignment but also that he acted in good faith 27 C W N 611=1923 Cal 631 To find out whether a particular payment
look to the mind of the bankrupt at
give preference to a particular creditor
business and to save himself from seri
this section But if the act was merely to stave off bankruptcy for a short time or to assist in reinstating him afterwards, it would be fraudulent preference 18 L W 696=73 Ind Cas 532 An assignee must prove his case to be within the Statute A I R 1928 P C 77 It is a question to be determined on the facts of each case whether a transfer made on the eve of insolvency is fraudulent preference so as to render it void under s 56 of the Act or was brought about by pressure from the creditor A I R 1934 Rang 10=11 Rang 489

Protection of *bona fide* transactions

57 Subject to the foregoing provisions with respect to the effect of insolvency on an execution, and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

(*a*) *any payment by the insolvent to any of his creditors*,
(*b*) any payment or delivery to the insolvent,
(*c*) any transfer by the insolvent for valuable consideration, or
(*d*) any contract or dealing by or with the insolvent for valuable consideration

Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor

Notes—Where a person *bona fide* and for valuable consideration takes transfer of property from a person who has committed an act of insolvency of which the transferee is not aware, such a transfer is saved under clause (*c*) and proviso and the official assignee cannot get rid of the transfer 14 L W 715

Proviso—20 C W N 554=23 C L J 468=34 Ind Cas 435

Cases—39 M 250, 35 Ind Cas 942

Realisation of property

Possession of property by official assignee

58 (1) The Official Assignee shall as soon as may be, take possession of the deeds, books and documents of the insolvent and all other parts of his property capable of manual delivery

(2) The official assignee shall in relation to and for the purpose of acquiring or retaining possession of, the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the Code of Civil Procedure, 1908 and the Court may on his application enforce such acquisition or retention accordingly

(3) Where any part of the property of the insolvent consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it, if he had not *become insolvent*

(4) Where any part of the property of the insolvent consists of things in action such things shall be deemed to have been duly transferred to the official assignee

* Act V of 1908

(5) Any treasurer or other officer, or any banker, attorney, or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee

Sub section (2)—A Court has power under this sub section to remove from [illegible] ms title adversely to the insolvent 49 [illegible] R 1926 (Mad) 363 The Insolvency [illegible] olvent is disputed to authorise official [illegible] ement of dispute A I R 1931 Mad [illegible]

Sub section (5)—Where an agent of an insolvent had received no notice of his principle's insolvency he is not liable to be convicted under this sub section for sending account books and securities from Rangoon to his principal in India 103 Ind Cas 184=A I R 1927 Rang 193=5 R 244 The provisions of this sub section are penal in their nature and cannot be construed as applying to any particular case unless it is quite clear that no other construction of the section is possible They cannot be applied to the powers of the official assignee prior to the adjudication when he is acting not under the powers devolving on him by operation of the Act itself, but under the powers specially conferred on him by his appointmen as Interim Receiver under section 16 *S T Chettiar* v *The Official Assignee*, 5 R 244=103 Ind Cas 184=A I R 1927 Rang 193

59 (1) The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure to break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be

Seizure of property of insolvent

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any such officer as aforesaid who may execute it according to its tenor

Notes—This section corresponds to section 21 (2) of the English Bankruptcy Act, 1883 (46 & 47 Vict, c 52) If the official assignee anticipates trouble he can get a warrant from the Court under this section 124 Ind Cas 144

60 (1) Where an insolvent is an officer of the Army or Navy or of his Majesty's Royal Indian Marine Service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct

Appropriation of portion of pay or other income to creditors

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order as it thinks just for the payment to the official assignee, for distribution among the creditors, of so much of such salary or income as may be liable to attachment in execution of a decree or of any portion thereof

[illegible] sections (1), (2) and (3) of [illegible] naking the order the [illegible] intenance according [illegible] *cer* v. *Vons Colin1,* [illegible] e construed as *ejus* [illegible] (2) in respect only [illegible] Ind Cas 50

61. The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any transfer whatever

Vesting and transfer of property

Notes —The property of an insolvent vests in the official assignee without any ti (1879) 11 Ch D 900, *Exparte* *I* *Son, Ltd* (1902) 1 Ch 467, *Re* *I* 9 Eq 653

62 (1) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property

Disclaimer of onerous property

Provided that, where any such property has not come to the knowledge of the official assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights, interest and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the ... shall not except so far as is necessary ... and the official ... r person

Notes ... corresponds to sub sections 55 (1) and (2) of the English B ... n ... E ...

Exparte Allen, Re Fussell, (1882) 20 Ch D 341, see also *Re Beslable*, (1901) 2 K B 518 Disclaimer releases the official assignee from all personal liability under a lease, even if he has entered and paid rent *Exparte Allen, Re Fussell*, (1882) 20 Ch D 341; *Gabriel* v *Blankenstien*, (1884) 13 Q B D 684

63 Subject always to such rules as may be made in this behalf, the official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court, and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the Court thinks just

Disclaimer of leaseholds

Notes —This section corresponds to section 55 (3) of the English Bankruptcy Act 1883

64 The official assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application in writing has been made to the Official Assignee by any person interested in the property requiring him to decide whether he will disclaim, and the official assignee has for a period of twenty eight days after the receipt of the application, or such extended period as may be allowed by the Court declined or neglected to give notice that he disclaims the property; and, in the case of a contract, if the official assignee after such application as aforesaid, does not

Power to call on official assignee to disclaim

(5) Any treasurer or other officer, or any banker, attorney, or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee

Sub section (2)—A Court has power under this sub section to remove from possession of the properties a person who claims title adversely to the insolvent 49 M 762=23 L W 94=92 Ind Cas 573=A I R 1926 (Mad) 363 The Insolvency Court has power when the title of the insolvent is disputed to authorise official assignee to take possession pending settlement of dispute A I R 1931 Mad 672=133 Ind Cas. 777

Sub section (5)—Where an agent of an insolvent had received no notice of [illegible] victed under this sub section for [illegible] to his principal in India 103 [illegible] 14 The provisions of this sub section are penal in their nature and cannot be construed as applying to any particular case unless it is quite clear that no other construction of the section is possible [illegible] vers of the official assignee prior to the adjudi [illegible] r the powers devolving on him by operation of [illegible] specially conferred on him by his appointmen [illegible] 16 *S T Chettiar* v *The Official Assignee*, 5 R 244=103 Ind Cas 184=A I R 1927 Rang 193

Seizure of property of insolvent

59 (1) The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure to break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him the Court may, if it thinks fit, grant a search warrant to any such officer as aforesaid who may execute it according to its tenor

Notes—This section corresponds to section 21 (2) of the English Bankruptcy Act, 1883 (46 & 47 Vict, c 52) If the official assignee anticipates trouble he can get a warrant from the Court under this section 124 Ind Cas 144

Appropriation of portion of pay or other income to creditors

60 (1) Where an insolvent is an officer of the Army or Navy or of his Majesty's Royal Indian Marine Service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order as it thinks just for the payment to the official assignee, for distribution among the creditors, of so much of such salary or income as may be liable to attachment in execution of a decree or of any portion thereof

Notes—This section corresponds to section 53 sub sections (1), (2) and (3) of the English Bankrupcty Act of 1883 (46 & 47 Vict, c 52) In making the order the Court allows the insolvent sufficient amount for his proper maintenance according to his condition of life *Re Graydan* (1896) 1 Q B 417, *Murcer* v *Vons Colina* (1900) 1 Q B 130 The term 'income" in s 60 (2) must be construed as *ejus dem generis* with salary and the Court has jurisdiction under s 60 (2) in respect only of the insolvent's salary or income in the nature of a salary 131 Ind Cas 50

Vesting and transfer of property

61. The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any transfer whatever

Notes—The property of an insolvent vests in the official assignee without any transfer See also *Re Bentham Mills Spinning Co* (1879) 11 Ch D 900, *Exparte Harrison*, (1885) 28 Ch D 363, *Re W Key & Son, Ltd* (1902) 1 Ch 467, *Re London and Provincial Telegraph Co* (1870) L R 9 Eq 653

Disclaimer of onerous property

62 (1) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee may notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf [illegible] ne within twelve months after the [illegible] the property [illegible] not come to the knowledge of the official assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights interest and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the official assignee from liability, affect the rights or liabilities of any other person

Notes—Th[illegible] 55 (1) and (2) of the English Bankruptcy [illegible] med *Re* [illegible] property h[illegible] *Exparte All*[illegible] [illegible] 541, see also *Re Bestable*, (1901) 2 K B [illegible] a[illegible] nee from all personal liability under C[illegible] *Exparte Allen Re Fussell*, (1882) 20 Q B D 684

Disclaimer of leaseholds

63 Subject always to such rules as may be made in this behalf, the official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court, and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the Court thinks just

Notes—This section corresponds to section 55 (3) of the English Bankruptcy Act 1883

Power to call on official assignee to disclaim

64 The official assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application in writing has been made to the Official Assignee by any person interested in the property requiring him to decide whether he will disclaim, and the official assignee has for a period of twenty eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property; and, in the case of a contract, if the official assignee after such application as aforesaid, does not

within the said period or extended period disclaim the contract, he shall be deemed to have adopted it

Notes—This section corresponds to section 55 (4) of the English Bankruptcy Act, 1883 Time runs not from the posting of the application but from its receipt *Red* v *Harvey*, (1880) 5 Q B D 184 If the official assignee neglects to give notice within 28 days he is personally liable *Re Page*, (1884) 14 Q B D 401

Power for Court to rescind contract

65 The Court may, on the application of any person who is, as against the official assignee, entitled to the benefit, or subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non performance of the contract, or otherwise as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency

Notes—This section corresponds to section 55(5) of the English Bankruptcy Act, 1883

Power for Court to make vesting order in respect of disclaimed property

66 The Court may, on the application of any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose

Provided always that where the property disclaimed is of a leasehold nature the Court shall not make a vesting order in favour of any person claiming under the insolvent, whether as under lessee or as mortgagee except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all [illegible] is no person claiming ur [illegible] upon such terms, the [illegible] the property in any pe [illegible] character and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the insolvent

(2) The Court may, if it thinks fit modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order

Notes—This section corresponds to section 55 (6) of the English Bankruptcy Act, 1883 *Vide* also *Re Carter & Ellis*, (1905) 1 K B 735, *Re Finley*, (1888) 21 Q B D 475, *Re Smith*, (1890) 25 Q B D 536

Persons injured by disclaimer may prove

67 Any person injured by the operation of a disclaimer under the foregoing provisions shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency

Notes —This section corresponds to section 55 (7) of the English Bankruptcy Act, 1883 As regards the measure of the injury *Vide Exparte Llynvi Coal and Iron Co* (1871) 7 Ch App 28, *Exparte Blake*, (1879) 11 Ch D 572, *Re Carruthers*, (1895) 2 Mans 172, *Re Hallet*, (1894) 1 Mans 380

Duty and powers of official assignee as to realisation

68 (1) Subject to the provisions of this Act, the official assignee shall, with all convenient speed, realize the property of the insolvent, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent,
(*b*) give receipts for any money received by him,
and may, by leave of the Court, do all or any of the following things namely —
(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same,
(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent,
(*e*) employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the Court,
(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time or fully paid shares debentures, or debenture stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit,
(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts or for the purpose of carrying on the business,
(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities on such terms as may be agreed upon,
(*i*) divide in its existing form amongst the creditors according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold

(2) The official assignee shall account to the Court and pay over all moneys and deal with all securities in such manner as is prescribed or as the Court directs

Notes —To take benefit under forward contracts entered into by the insolvent

Cas 756

Distribution of property

Declaration and distribution of dividends

69 (1) The official assignee shall, with all convenient speed declare and distribute dividends amongst the creditors who have proved their debts

(2) The first dividend (if any) shall be declared and be distributed within "one year * after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall in the absence of sufficient reason to the contrary be declared and be payable at intervals of not more than six months

(4) Before declaring a dividend, the official assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent s schedule who has not proved his debt

* Substituted by Act III of 1929

(5) When the official assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and, if required by any creditor, a statement in the prescribed form as to the particulars of the estate.

Notes—This section corresponds to section 58 (4) of the English Bankruptcy Act, 1883 A creditor who has failed to prove his debts within specified time will not be debarred from getting dividends *Re Sheperd*, (1887) 4 Morr 130 So long as there are assets available for distribution a creditor may come and prove *Exparte Day*, (1831) Mont 212, *Exparte Boddam*, (1860) 2 De G F. & J. 625; *Re McMurdo*, (1902) Ch 684

70 Where one partner in a firm is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

Joint and separate properties

Notes—This section corresponds to section 59 (1) of the English Bankruptcy Act, 1883

71. (1) In the calculation and distribution of dividends, the official assignee shall retain in his hands sufficient assets to meet—

Calculation of dividends

(*a*) debts provable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs,

(*b*) debts provable in insolvency the subject of claims not yet determined;

(*c*) disputed proofs or claims; and

(*d*) the expenses necessary for the administration of the estate or otherwise

(2) Subject to the provisions of sub section (1), all money in hand shall be distributed as dividends

Notes—This section corresponds to section 63 of the Provincial Insolvency Act 1920 Where after the admission by the trustee of a creditor's proof against a bankrupt's estate and that creditor's participation in a first dividend, it was ascertained that he had proved for and received more than he was entitled to, and [illegible] *Held* that in the absence [illegible] in any future dividends in respect of [illegible] or the over payment in respect of his [illegible] 3 Ch 355=93 L J Ch 571

72. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official assignee any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein

Right of creditor who has not proved debt before declaration of a dividend

Notes—Under this section the Court ought not in general to interfere with a [illegible]

73. (1) When the official assignee has realised all the property of the insolvent or so much thereof as can, in his opinion be realized without needlessly protracting the proceeding in insolvency, he shall, with the leave of the Court, declare a final dividend, but before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not proved, that, if they do not prove their claims to the satisfaction of the Court within the time limited by the notice, he will proceed to make a final dividend without regard to their claims

Final dividend

(2) After the expiration of the time so limited, or if the Court on application by any such claimant, grants him further time for establishing his claim, then on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts without regard to the claims of any other persons.

Notes—This section corresponds to section 64 of the Provincial Insolvency Act,

Ind Cas 620

74. No suit for a dividend shall lie against the Official Assignee, but where the Official Assignee refuses to pay any dividend, the Court may, on the applicatson of the creditor who is aggrieved by such refusal, order him to pay it, and also to pay out of his own money, interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application

No suit for dividend

Notes—This section corresponds to section 65 of the Provincial Insolvency Act and the English Bankruptcy Act, 1883 (46 & 47 Vict, c 52) s 63 The remedy

after his release *Re*

official assignee is

the mistake of law.

75. (1) Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent, for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct

Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service

(2) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks

of the insolvent and

engaged in winding

varied or determined by the Court

Notes—This section corresponds to section 66 of the Provincial Insolvency Act 1920 As regards the naming of trade, *Vide* 40 C 478, 18 M 294 (P C); 24 C W N 582 As regards the maintenance under the Provincial Insolvency Act, *Vide*, 38 Ind Cas 410, 45 A 364

76 The insolvent shall be entitled to any surplus remaining after payment in full of his creditors with interest, as provided by this Act and of the expenses of the proceedings taken thereunder

Right of insolvent to surplus

Notes—This section corresponds to section 67 of the Provincial Insolvency Act, 1920 and section 65 of the English Bankruptcy Act, 1883 He cannot, however, as owner of a possible surplus interfere in the administration of the estates [*Exparte*

Sheffild, (1879) 10 Ch D 439, *Re Lead biller* (1878) 10 Ch D 338, though he may execute an assignment or mortgage of it which will hold good against a trustee in a second bankruptcy] [*Bird* v *Philphot* (1900) 1 Ch 822, *Re Adie* (1901) 84 L T 508], see also *In Re Prior* (1921) 3 K B 333, 73 Ind Cas. 379 Where there is a surplus in the estate of the insolvent after paying all the debts in full the Court can give 6 per cent interest 126 Ind Cas 754=A I R 1930 Cal 547=51 C L J 283

PART IV

OFFICIAL ASSIGNEES

Appointment and removal of official assignees of insolvent s estate

77 (1) The Chief Justice of each of the High Courts of Judicature at Fort William, Madras, "Bombay and Rangoon and the [Judicial Commissioner of Sind]"* may from time to time, appoint, substantively or temporarily, such person as he thinks fit to the office of official assignee of insolvent's estates "and such person or persons as he thinks fit to the office of deputy official assignee"† for each of the said Courts respectively and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding "any of the said offices"‡ for any cause appearing to the Court sufficient

†"(a) Subject to rules made under section 112, the deputy official assignee shall have all the powers and shall discharge all the duties and in exercise of such powers and in the discharge of such duties shall be subject to all the liabilities of the official assignee under this Act"

(2) Every official assignee "and every deputy official assignee ‡ shall give such security, and shall be subject to such rules and shall act in such manner as may be prescribed

n sub sect
official
ourts for
at Calcutta Madras and Bombay respective
Act, 1848 § and in the Chief Court of Lower Burma under that Act as applied by the Lower Burma Courts Act 1900‖ shall, without further appointment for that purpose, become the official assignees, substantive or temporary as the case may be under this Act in the High Courts at Fort William, Madras and Bombay and in the Chief Court of Lower Burma respectively

Notes.—'Attached to each Bankruptcy Court is an officer styled the Official Receiver of the district of the Court whose duty it is both to assume control over the estate of a debtor against whom a receiving order has been made and to take a leading part in the investigation of the debtor s conduct and also to perform other duties in connection with estates which come under the jurisdiction of the Bankruptcy Court and with the conduct of debtors —*Halsbury* Vol II, p 99

Power to administer oath

78 An official assignee may for the purpose of affidavits, verifying proofs, petitions or other proceedings under this Act administer oaths

Notes—This section corresponds to section 68(2) of the English Bankruptcy Act, 1883

Duties as regards the insolvent s conduct

79 (1) The duties of an official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate

(2) In particular it shall be the duty of the official assignee—

(a) to investigate the conduct of the insolvent and to report to the Court upon any application for discharge stating whether there is reason to

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* when Act 34 of 1926 will come into force it will be Court of Sind

‡ Substituted by Act X of 1930

§ Stat 11 & 12 Vict, c. 21

‖ Act VI of 1900.

believe that the insolvent has committed any act which constitutes an offence under this Act or under sections 421 to 424 of the Indian Penal Code* in connection with his insolvency or which would justify the Court in refusing, suspending, or qualifying an order for his discharge,

(*b*) to make such other reports concerning the conduct of the insolvent as the Court may direct or as may be prescribed, and

(*c*) to take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct or as may be prescribed.

Notes—Any transaction between an insolvent and the creditor conducted

Bottomley v *Brogham*, (1908) 1 K B 584

Duty to furnish list of creditors

80 The official assignee shall, whenever required by any creditor so to do, and on payment by the creditor of the prescribed fee furnish and send to the creditor by post a list of the creditors showing in the list the amount of the debt due to each of the creditors

Remuneration

81 (1) Such remuneration shall be paid to the official assignee as may be prescribed

(2) No remuneration whatever beyond that referred to in sub section (1) shall be received by an official assignee as such

himself of the provisions of the Act for the purpose of realising by the Official Assignee, even as a result of the arrangement 294=A I R 1926 Cal 1033

Misfeasance

82 The Court shall call the official assignee to account for any misfeasance, neglect or omission which may appear in his accounts or otherwise and may require the official assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect or omission

Notes—A creditor who lodges his proof in statutory form is entitled that it should receive attention without disclosing anything more In a case where the

Name under which to sue or be sued

83 The official assignee may sue and be sued by the name of "the Official Assignee of the property of , an insolvent,' inserting the name of the insolvent, and by that name may hold property of every description, make contracts enter into any engagements binding on himself and his successors in office and do all other acts necessary or expedient to be done in the execution of his office.

Notes—By this section the official assignee is entitled to sue or be sued as regards an insolvent's estate

Office vacated by insolvency

84 If an order of adjudication is made against an official assignee, he shall thereby vacate the office of official assignee

Notes—If he is declared an insolvent he is disqualified as regards his holding the office *Vide* also section 85 of the English Bankruptcy Act, 1883 and *Re Newman Ex-parte Official Receiver* (1899) 2 Q B D 587

* Act XLV of 1860

Discretionary powers and control thereof

85 (1) Subject to the provisions of this Act and to the directions of the Court, the official assignee shall in the administration of the property of the insolvent, and in the distribution thereof amongst his creditors have regard to any resolution that may be passed by the creditors at a meeting

(2) The official assignee may from time to time summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct or whenever requested in writing to do so by one fourth in value of the creditors who have proved

(3) The official assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency

(4) Subject to the provisions of this Act the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors

Notes—In cases of doubt or difficulty or where provision is not made by the Acts or rules as to proceedings in Court, the Official Receiver may apply for

their nature may be and whether founded on a contract loan or a judgment or a decree He has got power to go behind a judgment and enquire into the validity of a debt 129 Ind Cas 650

Appeal to Court.

86. If the insolvent or any of the creditors or any other person is aggrieved by any Act or decision of the official assignee he may appeal to the Court and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just

Notes—Sections 36 and 56 of the Act do not apply to cases where the estate of a deceased is being administered in insolvency and a creditor can not on the

makes an application to a Court for a decision or any person who is brought before the Court to submit to a decision is, if the decision goes against him thereby a person aggrieved by that decision within the meaning of that expression in this section of the Act 20 C W N 995 Where the official assignee

of official assignee and does not relate to a claim for damages against him for wrongful trespass to goods 124 Ind Cas 144=A I R 1930 Mad 458

Control of Court

37. (1) If any official assignee does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto the Court shall enquire into the matter and take such action thereon as may be deemed expedient

(2) The Court may at any time, require any official assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency

(3) The Court may also direct an investigation to be made of the books and vouchers of the official assignee

PART V

Committee of Inspection

88 The Court may if it so thinks fit, authorize the creditors who have proved to appoint from among the creditors or holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of super intending the administration of the insolvent s property by the official assignee

Committee of Inspection

Provided that a creditor who is appointed a member of a committee of ins pection shall not be qualified to act until he has proved

Notes —Ih s section corresponds to section 22 (1) of the Engl sh Bankruptcy Act 1883 The proviso corresponds to section 5 of the English Bankruptcy Act of 1890

Control of Committee of ins pection over official assignee

[illegible]

PART VI

Procedure

90 (1) In proceedings under this Act, the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction

Powers of the Court

Provided that nothing in this sub section shall in any way limit the jurisdic tion conferred on the Court under this Act

(2) Subject to the provisions of this Act and rules the costs of and inciden tal to any proceeding in the Court shall be in the discretion of the Court

(3) The Court may at any time adjourn any proceedings before it upon such terms if any as it thinks fit to impose

(4) The Court may at any time amend any written process or proceeding under this Act upon such terms if any, as it thinks fit to impose

(5) Where by this Act or by rules the time for doing any Act or thing is limited the Court may extend the time either before or after the expiration thereof upon such terms if any, as the Court thinks fit to impose

(6) Subject to rules the Court may in any matter take the whole or any part of the evidence either *viva voce* or by interrogatories or upon affidavit or by commission

(7) For the purpose of approving a composition or scheme by joint debtors, the Court may if it thinks fit and on the report of the official assignee that it is expedient so to do dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by ill ness or absence abroad

(8) For the purposes of this Act, ' the Court of the Judicial Commissioner of Sind * shall have all the powers to punish for contempt of Court which are possessed by the High Courts of Judicature at Fort William, Madras and Bombay respectively

Notes —The Judge presiding over the Insolvency Court in the High Court cannot by virtue of the extraordinary power given to a Judge on the original s de *under this sect on call up or stay a pending case in a mofussil Court* 31 C W N 847=103 Ind Cas 754=A I R 1927 Cal 629 The powers given under th s sec tion being only such powers as are exercised by the High Court in its Ordinary Original Civil Jurisdiction the power of transfer or withdrawal is necessarily not

* Substituted by Act 9 of 19 6 The words ' Chief Court of S nd" are to be substituted for the above words when Act 34 [illegible]

this section and is therefore not one
=49 B 788=A I R 1925 Bom 543
r to review, rescind or vary and sec-
power by importing the provision of
C P. Code Or 47 r 1 A I R 1929 Rang 229=118 Ind Cas 615

Sub section (5) —The High Court can extend the time of appeal in a proper case under this sub section 27 C W N 916=1924 Cal 83

Cases —27 C W. N 370=1923 Cal 427

91 Where two or more insolvency petitions are presented against the same debtor or against joint debtors or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit

Consolidation of petitions

Notes —This section corresponds to section 15 of the Provincial Insolvency Act, 1920 Where the estate of a deceased partner is being administered under the Act, and the other partner is adjudged insolvent the estate may be consolidated *Re C Creaves*, (1904) W N 124 As regards transfer of proceedings from one Court to another, *Vide Re Linton*, (1892) 8 T L R 219 377, *Exparte Soames*, (1884) 13 Q B D. 484 As regards consolidation, *Vide Re Stick*, (1886) 3 Morr 78, *Re Abott* (1894) 1 Q B 442

92 Where the petitioner does not proceed with due deligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor

Power to change carriage of petition

Notes —This section corresponds to section 16 of the Provincial Insolvency Act and section 107 of the English Bankrup cy Act, 1883 Where a creditor's petition order was then made on the debtor s the petition was reversed the Court of the creditor's petition *Re Haynes*,

93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall unless the Court otherwise orders, be continued as if he were alive

Continuance of proceedings on death of debtor

Notes —Where a scheme has been approved and is subsequently annulled and the debtor dies after the scheme has been approved and before it is annulled this section is applicable 105 Ind Cas 90=54 C 650, see also A I R 1928 Cal 21

94 The Court may at any time, for sufficient reason make an order staying the proceedings under an insolvency petition, either altogether or for a limited time on such terms and subject to such conditions as the Court thinks just.

Power to stay proceedings

Notes —Where a petitioning creditor's debt is founded on a judgment the pendency of an appeal from the judgment would if the appeal is *bona fide* be a sufficient reason for staying proceeding on an insolvency petition under this section 13 Bur L T 230

95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others

Power to present petition against a partner

Notes —This section is based on the principle that the partners are jointly and severally liable for the debts of the partnership As regards the right of a solvent partner when one of the partners is bankrupt to present a petition in respect of partnership debt *Vide Ex parte Blakey*, (1822) 1 Cl & J 197, *Re Beauchamp*, (1896) 3 Mans 207, *King* v *Henderson*, (1898) A C 720

96 Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them

Power to dismiss petition against some respondents only

Notes —A brankruptcy notice may be issued against one of several debtors against whom judgment has been obtained jointly *Re Law, Exparte Gibsons*, (1895) 1 Q B 734

97 Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first mentioned petition is in course of prosecution, and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just

Separate insolvency petitions against partners

Notes —This section provides that where insolvency proceedings are pending against one partner in a firm, any other insolvency petition shall be filed or transferred to the Court in which the first mentioned petition is in course of prosecution The section is sufficiently wide to cover insolven y petition presented under the Provin cial Insolvency Act to a Court which is subject to the superintendence of the High Court 48 M L J 324=86 Ind Cas 1031=48 M 514

98 (1) Where a partner in a firm is adjudged insolvent, the Court may authorize the official assignee to continue or commence and carry on any suit or other pro ceeding in his name and that of the insolvent's partner, and any release by the partner of the debt or demand to which the pro [illegible]

Suits by official assignee and insolvent's partners

mmence any suit or of the application shall be given to the insolvent s partner, and he may show cause against it and on his application the Court may if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs

99 (1) Any two or more persons being partners or any person carrying on business under a partnership name may take proceedings or be proceeded against under this Act in the name of the firm

Proceedings in partnership name

Provided that, in that case the Court may on application by any person interested order the names of the persons who are partners in the firm, or the name of the person carrying on *business under a partnership name to be dis* closed in such manner and verified on oath or otherwise as the Court may direct.

(2) In the case of a firm in which one partner is an infant, an adjudication order may be made against the firm other than the infant partner

Notes —Under sub section (1) of this section an adjudication order can be made against a firm in the name of the firm and the order operates on the property of each partner 25 Ind Cas 222=7 Bur L T 304

100 (1) A warrant of arrest issued by the Court may be executed in the same manner and subject to the same conditions, as a warrant of arrest issued under the Code of Criminal Procedure 1898*, may be executed

Warrants of insolvency Courts

(2) A warrant to seize any part of the property of an insolvent issued by the Court under section 59, sub-section (1), shall be in the form prescribed, and

* Act V of 1898

sections 77 (2), 79, 82, 83, 84 and 102 of the said Code shall, so far as may be, apply to the execution of such warrant

(3) A search warrant issued by the Court under section 59, sub section (2) may be executed in the same manner and subject to the same conditions, as a search warrant for property supposed to be stolen may be executed under the said Code.

Notes —This section corresponds to section 119 (1) of the English Bankruptcy Act, 1883

PART VII

Limitation

101 The period of limitation for an appeal from any act or decision of the official assignee or from an order made by an officer of the Court empowered under section 6 shall be twenty days from the date of such act, decision or order as the case may be

Limitation of appeals

Notes —An appeal must be made within 20 days 27 C W N 916=1924 Cal 83 The period of 20 days provided in this section runs not from the date of the finding being filed or signed by the Registrar under s 18 of schedule II but from the date of the latter being completed and that report being signed 47 C 721=60 Ind Cas 689

PART VIII

Penalties

102 An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months or with fine, or with both

Undischarged insolvent obtaining credit

Notes —Section 102 of the Act applies only to an undischarged insolvent adjudicated under the Act But if a conviction under that section is unsustainable [illegible] on 72 (1) of the Provincial Insolvency [illegible] to one under section 72 sub section (1) [illegible] be held to be valid with reference to [illegible] Ind Cas 116=A I R 1927 Cal 149 If an undischarged insolvent personating another person of the same name obtains credit for more than Rs 50 without disclosing his insolvency, he is guilty of an offence under this section 85 Ind Cas 229 The transfer of property by way of mortgage in raising *the loan on hypothecation of immovable property acquired* by the insolvent after an adjudication order does not stand on the same footing as obtaining credit merely as mentioned in s 102 of the Act and therefore the conviction of a person for borrowing a sum of money on the mortgage of land with the knowledge that he was an undischarged insolvent cannot be maintained A L R 1934 C 11=38 C W N 283=4 Cr R 107

Punishment of insolvent for certain offences

103 Any person adjudged insolvent who—

(*a*) fraudulently with the intent to conceal the state of his affairs or to defeat the objects of this Act,

(*i*) has destroyed or otherwise wilfully prevented or purposely withheld the production of any books, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(*ii*) has kept or caused to be kept false books or

(*iii*) has made false entries in, or withheld entries from or wilfully altered or falsified any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(*b*) fraudulently with intent to diminish the sum to be divided amongst his creditors or of giving an undue preference to any of the said creditors

(*i*) has discharged or concealed any debt due to or from him or

(*ii*) has made away with charged mortgaged or concealed any part of his property of what kind soever

shall on conviction be punishable with imprisonment for a term which may extend to two years

Notes—To support a conv ct on under this sect on a charge must be made against the insolvent and the same must be proved beyond a reasonable doubt before it can be made a ground of refus ng to discharge the insolvent under sect on 39 (1)—*A K R M M C T Firm* v *Saikh Jooman* 101 Ind Cas 419—5 R 50=A I R 1927 Rang 126 Th s sect on appl es to offences comm tted both before and after adjud cation 47 C 254=29 C W N 425 For his not disclosing his books the insolvent can be dealt with under Insolvency Act 113 Ind

S nd 381=A I R 1933 Sind 379

Sub-section (2) (b)—39 M L T 268=105 Ind Cas 458

Disqualifications of insolvent

103A (1)* Where a debtor is adjudged or readjudged insolvent under this Act he shall, subject to the provisions of this section be disqualified from—

(*a*) being appointed or acting as a Magistrate

(*b*) being elected to any office of any local authority where the appointment to such office is by election or holding or exercising any such office to which no salary is attached and

(*c*) being elected or sitting or voting as a member of any local authority

(2) The disqualifications which an insolvent is subject to under this section shall be removed and shall cease if—

(*a*) the order of adjudication is annulled under sub section (1) of section 21, or

(*b*) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part

Act
188 •nders
the arl a
ment He is also disqual fied for being or acting as a just ce of the peace for be ng elected to or holding or exerc s ng the office of mayor alderman or councillor or that of guardian or overseer of the poor member of a san tary au hor ty or of a highway or bur al board or select vestry or county council and if he is adjudged bankrupt wh lst holding any of these off ces h s office thereupon becomes vacant *Halsbury's Laws of England*, Vol II p 89

Clause (3)—The granting of such certificate is discret onary with the Court *Re Burgees* (1887) 4 Moor 886 , *Re Lord Colin Campbell* (1888) 20 Q B D 816 , *Re Graha ne* (1889) 5 T L R 259

Procedure on charge under sect on 103

104† (1) Where the Court is satisfied after such preliminary inquiry if any as it thinks necessary that there is ground for inquiring into any offence referred to in

ted by the insolv
complaint of the
of the first clas
complaint in the

* Section 103 A has been a lded by Act XI of 1920
† Substituted by Act 9 of 19?6

(2) Any complaint made by the Court under sub section (1) may be signed by such officer of the Court as the Court may appoint in this behalf

Notes —Under this amended section no notice need be served on the insolvent To establish a charge that books are being purposely withheld it must be shown that they exist and have not been destroyed 24 C W N 418=56 Ind Cas 577 Although under this section the official assignee is empowered to make a report for the purpose of prosecution from this it could not be contended that the report of the official assignee is *prima facie* evidence in criminal proceedings 14 M L T 48=25 M L J 320=(1913) M W N 876=20 Ind Cas 48?

Criminal liability after discharge or composition

105 Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved

Notes —This section corresponds to section 71 of the Provincial Insolvency Act 1920 and section 162 of the Bankruptcy Act 1914

PART IX

Small Insolvencies

Summary administration in small cases

106 (1) Where the Court is satisfied by affidavit or otherwise or the official assignee reports to the Court that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications namely —

(*a*) no appeal shall lie from any order of the Court, except by leave of the Court,

(*b*) no examination of the insolvent shall be held except on the application of a creditor or the official assignee

(2) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate

Notes —Where the insolvency Court refuses leave to appeal under s 106 (a) of the Act it is open to the unsuccessful party to apply to the Court of appeal for ... iple is invol ... —72 Ind Cas ... o condone a ... when there

PART X

Special Provisions

Exemption of corporation etc, from insolvency proceedings

107 No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force

Notes —This section corresponds to s 123 of the English Bankruptcy Act 1883.

108 (1) Any creditor of a deceased debtor whose debt would have been sufficient to support an insolvency petition against the debtor, had he been alive may present to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his decease, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act

Administration in insolvency of estate of person dying insolvent

(2) Upon the prescribed notice being given to the legal representative of the deceased debtor the Court may, upon proof of the petitioner s debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of justice for the administration of the deceased debtor s estate , but that Court may in that case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency under this Act, and thereupon the last mentioned Court may make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor

Notes —Letters of administration may be granted to a creditor although the liabilities of the deceased afterwards appear to be in excess of the assets Application in the insolvency Court is not the creditor s only remedy 15 C W N 350

109 (1) Upon an order being made for the administration of a deceased debtor s estate under section 108, the property of the debtor shall vest in the official assignee of the Court and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act

Vesting of estate and mode of administration

(2) With the modification hereinafter mentioned all the provisions of Part III, relating to the administration of the property of an insolvent shall so far as the same are applicable apply to the case of such administration order in like manner as to an order of adjudication under this Act

(3) In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor s estate , and those claims shall be deemed a preferential debt under the order and be payable in full out of the debtor s estate in priority to all other debts

(4) If, on the administration of a deceased debtor s estate any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor together with the costs of the administration and interest as provided by this Act in case of insolvency such surplus shall be paid over to the legal representative of the deceased debtor s estate, or dealt with in such other manner as may be prescribed

110 (1) After notice of the presentation of the petition under section 108 no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee

Payments or transfer by legal representatives

(2) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative or by a District Judge acting under the powers conferred on him by section 64 of the Administrator General s Act, 1874, before the date of the order for administration

Notes —This section corresponds to s 125 (9) of the Bankruptcy Act 1883

111 The provisions of sections 108, 109 and 110 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator General

Saving of jurisdiction of Administrator General

PART XI

RULES

112 (1) The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act

Rules

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for and regulate—

(*a*) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for and the account to which they are to be paid ,

(*b*) the investment, whether separately or collectively, of unclaimed dividends balances and other sums appertaining to the estates of insolvent debtors whether adjudicated insolvent under this or any former enactment , and the application of the proceeds of such investment ,

(*c*) the proceedings of the official assignee in taking possession of and realising the estates of insolvent debtors

(*d*) the remuneration of the official assignee ,

(*e*) the receipts payments and accounts of the official assignee,

(*f*) the audit of the accounts of the official assignee ,

(*g*) the payment of the remuneration of the official assignee, of the costs charges and expenses of his establishment and of the costs of the audit of his accounts out of the proceeds of the investments in his hands ,

(*h*) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the official assignee under the direction of the Court out of the proceeds aforesaid ,

(*i*) the payment of any civil liability incurred by an official assignee acting under the order or direction of the Court ,

(*j*) the proceedings to be taken in connection with proposals for composition and schemes of arrangements with the creditors of insolvent debtors ,

(*k*) the intervention of the official assignee at the hearing of applications and matters relating to insolvent debtors and their estates ,

"(*kk*) filing of lists of creditors and debtors and the affording of assistance to the Court by a petitioning debtor , "*

(*l*) the examination by the official assignee of the books and papers of account of undischarged insolvent debtors ,

(*m*) the service of notices in proceedings under this Act ,

(*n*) the appointment, meetings and procedure of committees of inspection ,

(*o*) the conduct of proceedings under this Act in the name of a firm ,

(*p*) the forms to be used in proceedings under this Act ,

(*q*) the procedure to be followed in the case of estates to be administered in a summary manner ,

(*r*) the procedure to be followed in the case of estates of deceased persons to be administered under this Act

†"(*s*) the distribution of work between the official assignee and his deputy or deputies "

Notes—The notice to creditors according to the rules framed by the Bombay High Court, must state the latest date within which to prove their claims Failure

* Added by Act XIX of 1927 † Added by Act X of 1930

to prove within the date involves the rejection of proof and time for an appeal against official assignee's decision runs from that date The official assignee is bound to adjudicate upon the proof submitted by claimant within 7 days of the latest date mentioned in the notice 117 Ind Cas 440

Sanction to rules

113 Rules under the provisions of this Part shall be subject, in the case of the High Court of Judicature at Fort William in Bengal, to the previous sanction of the Governor General in Council, and in the case of any other Court, of the Local Government

Publication of rules

114 Rules so made and sanctioned shall be published in the *Gazette of India* on in the local Official Gazette, as the case may be, and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act

PART XII

SUPPLEMENTAL

Exemption from duty of transfers, etc, under this Act

115 (1) Every transfer, mortgage, assignment, power of attorney, proxy paper, certificate, affidavit, bond or other proceedings, instrument or writing whatsoever before or under any order of the Court, and any copy thereof shall be axempt from payment of any stamp or other duty whatsoever

(2) No stamp duty or fee shall be chargeable for any application made by the official assignee to the Court under this Act or for the drawing and issuing of any order made by the Court on such application

Notes —An attorney of the official assignee is entitled to the same privileges as to stamp duty as the official assignee has by virtue of s 115 of the Presideney Towns Insolvency Act and he is entitled to obtain copies for purposes of appeal without the payment of any stamp duty 43 M 747=39 M L J 136=59 Ind Cas 475=(1920) M W N 424

The Gazette to be evidence

116 (1) A copy of the official gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice

(2) A copy of the official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date

Notes —The notification issued under this section is conclusive only with regard to the order having been duly made and, as regards the other facts it is only evidence of such facts 50 M 541 (1927) M W N 152=101 Ind Cas 12=25 L W 435=A I R 1927 Mad 526=52 M L J 352

Swearing of affidavits

117 Any affidavit may be used in a Court having jurisdiction under this act if it is sworn—

(*a*) in British India, before—

(*i*) any Court or Magistrate, or

(*ii*) any officer or other person appointed to administer oaths under the Code of Civil Procedure, 1908, *

(*b*) in England, before any person authorized to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized in writing in that behalf by the Judge of the Court or before a Justice of the Peace for the county or place where it is sworn,

(*c*) in Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace, and

* Act V of 1908

(*d*) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a British Minister or British Consul or British Political Agent or by a notary public)

Formal defect not to invalidate proceedings

118 (1) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court

(2) No defect or irregularity in the appointment of an official assignee or a member of a committee of inspection shall vitiate any act done by him in good faith

Notes —An application under s 36 (5) of the Presidency Towns Insolvency [illegible] such an section [illegible] 914=A [illegible]

Application of Trustee Act to insolvency of trustee

119 Where an insolvent is a trustee within the Indian Trustee Act, 1866, section 35 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly

Certain provisions to bind the Crown

120 Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown

Saving for existing rights of audience

121 Nothing in this Act or in any transfer or jurisdiction effected thereby, shall take away or effect any right of audience that any person may have had immediately before the commencement of this Act or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors

Notes —The effect of this section is that if vakils had the right of audience in the Insolvency Courts before 1909 it was not taken away from them, but if they had no such right previously it was not conferred on them 48 M 331=48 M L J 36 (F B)=85 Ind Cas 1025 Advocates enrolled in the Madras High Court under the provisions of the Bar Councils Act are entitled to act and plead in the Insolvency jurisdiction of the High Court 113 Ind Cas 876

Lapse and credit to Government of unclaimed dividends

122 Where the official assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of the Government of India, unless the Court otherwise directs

Claims to moneys credited to Government under section 122

123 Any person claiming to be entitled to any moneys paid to the account and credit of the Government of India under section 122, may apply to the Court for an order for payment to him of the same, and the Court if satisfied that the person claiming is entitled shall make an order for payment to him of the sum due

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government of India, the Court shall cause a notice to be served on such officer as the Governor General in Council may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

124 (1) No person shall, as against the official assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent or to set up any lien thereon

Access to insolvent's books

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed inspect at all reasonable times, personally or by agent, any such books in the possession of the official assignee.

125 Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed

Fees and percentages

126. All Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to section 118 of the Bankruptcy Act, 1883,* and to section 50 of the Provincial Insolvency Act, 1907 †

Courts to be auxiliary to each other

Notes—The Presidency Towns Insolvency Act is an Act of the Legislative Council of the Governor General and purports to vest the property of the insolvent wherever situate in the official assignee 40 C 78=8 Ind Cas 908 The presentation of a copy of the order of the English Court by the Trustee in Bankruptcy is not sufficient to give jurisdiction to the Indian Court 38 C 542=12 Ind Cas 542

127. (2) ‡The proceedings under an insolvency petion under the Indian Insolvency Act, 1848, § pending at the commencement of this Act shall, except so far as any provisions of this Act is expressly applied to pending proceedings, continue, and all the provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this Act had not been passed

Saving

THE FIRST SCHEDULE

(See section 26)

MEETINGS OF CREDITORS

[illegible]

2 Meetings sh[illegible]

Summoning of mee[illegible] insolvent's schedule,

Notes—This rule corresponds to r 3 of schedule 1 of the English Bankruptcy Act of 1883 (46 & 47 Vict. c 52)

3 The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting and may be delivered personally or sent by prepaid post letter

Notice of meetings

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* Stat 46 and 47 Vict, c 52

† Act III of 1907

‡ Sub section (1) of section 127 and certain words of sub-section (2) repealed by Act X of 1914 have been omitted

§ Stat 11 and 12 Vict c 21

as may be convenient The official assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper or in the local Official Gazette

Notes—According to rule 2 of schedule 1 of the English Bankruptcy Act, it is summoned by giving not less than seven days' notice of its time and place in the *London Gazette* and in a local paper—*Vide Halsbury*, Vol II, p 66

Duty of insolvent to attend if required

4 It shall be the duty of the insolvent to attend any meeting which the official assignee may, by notice, require him to attend, and any adjournment thereof Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting

Notes—According to rule 249 of sch 1 of the English Bankruptcy Act it is the debtor's duty to attend the first meeing although the notice is not sent or does not reach him *Halsbury*, Vol II, p 66

Proceedings not to be avoided for non receipt of notice

5 The proceedings held and resolutions passed at any meeting shall unless the Court otherwise orders be valid notwithstanding that any creditor has not received the notice sent to him

Notes—Non service of notice will not make the proceedings of the meeting invalid

Proof of issue of notice

6 A certificate of the official assignee that the notice of any meeting has been duly given shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed

Costs of meeting

7 Where on the request of creditors the official assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements Provided that the official assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting

Chairman

8 The official assignee shall be the chairman of any meeting

Right to vote

9 A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt provable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting

Notes—A person may not vote as a creditor at the first or any other meeting of [illegible] able in bankruptcy to be due to [illegible] before the time appointed for [illegible]

No vote in respect of certain debts

10 A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained

Notes—This rule corresponds to rule 9 of schedule I of the English Bankruptcy Act of 1882, see also *Exparte Ruffle, Re Dummelow*, (1873) 8 Ch App 997, *Re Parroll, Exparte Whittaker*, (1891) 8 Morr 49

[illegible]

inadvertence

Notes —This rule corresponds to rule 10 of schedule I of the English Act See also *Ex parte Clerk* (1892) 67 L T 252, *Re Safety Explosives Ltd* (1904) 1 Ch. 226, *Re Henry Lister & Co*, (1892) 2 Ch 417, *Re Piers* (1898) 1 Q B 627, *Re Mc Merdo* (1902) Ch 684, *Re Rone*, (1904) K B 489

Proof in respect of negotiable instruments

12 Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument or security must, subject to any special order of the Court made to the contrary be produced to the official assignee before the proof can be admitted for voting

Power to require creditor to give up security

13 It shall be competent to the official assignee within twenty eight days after a proof estimating the value of a security has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated

14 If one partner [illegible] hat [illegible] in [illegible] the [illegible]

Notes —This rule corresponds to rule 13 of schedule 1 of the English Act

15 The official assignee shall have power to admit or reject a proof for the [illegible]

Notes —This rule corresponds to rule 14 of schedule I of the English Act, *Vide* also *Re Bottomley*, (1892) 8 T L R, 424 *Re Clark*, (1901) 1 K B 655

Proxy

16 A creditor may vote either in person or by proxy

Notes —This rule corresponds to rule 19 of schedule I of the English Act

Instrument of proxy.

17 Every instrument of proxy shall be in the prescribed form and shall be issued by the official assignee

Notes —The instrument must be attested by a person other than the one appointed as proxy *Re Parrot, Ex parte Cullen* (1891) 2 Q B 151

General proxy

18 A creditor may give a general proxy to his attorney or to his manager or clerk or any other person in his regular employment In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor

Notes —This rule corresponds to rule 17 of schedule I of the English Act

Proxy to be deposited one day before date of meeting

19 A proxy shall not be used unless it is deposited with the official assignee one clear day before the time appointed for the meeting at which it is to be used

Notes —According to rule 19 of schedule I of the English Act proxies must be lodged with the official Receiver or Trustee not later than four o clock on the day before the meeting or adjourned meeting at which they are to be used *Halsbury*, Vol II p 68

Official Assignee as proxy

20 A creditor may appoint the official assignee to act as his proxy

Notes —This rule corresponds to rule 21 of Schedule 1 of the English Act.

Adjournment of meeting

21 The official assignee may adjourn the meeting from time to time and from place to place, and no notice of the adjournment shall be necessary

Notes.—This rule corresponds to rule 22 of Schedule 1 of the English Act

Minute of proceedings

22 The official assignee shall draw up a minute of the proceedings at the meeting and shall sign the same

Notes—This rule corresponds to rule 25 of schedule 1 of the English Act

THE SECOND SCHEDULE

(See section 48)

PROOF OF DEBTS

Proofs in ordinary cases

Time for lodging proof

1 Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication

Mode of lodging proof

2 A proof may be lodged by delivering or sending by post in a registered letter to the official assignee an affidavit verifying the debt

Authority to make affidavit

3 The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor If made by a person so authorized, it shall state his authority and means of knowledge

Contents of affidavit

4 The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated The official assignee may at any time call for the producation of the vouchers

Affidavit to state if creditor holds security

5 The affidavit shall state whether the creditor is or is not a secured creditor

Cost of proving debts.

6 A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders

Right to see and examine proof

7 Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times

Deduction to be made from proof

8 A creditor in lodging his proofs shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash

Proof by secured creditors

Proof where security realised

9 If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realised

Proof where security is surrendered

10 If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors he may prove for his whole debt

Proof in other cases

11 If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed

Valuation of security.

12 (1) Where a security is so valued the official assignee may at any time redeem it on payment to the creditor of the assessed value

(2) If the official assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be

agreed on between the creditor and the official assignee, or as, in default of agreement, the Court may direct If the sale is by public auction, the creditor, or the official assignee on behalf of the estate, may bid or purchase

Provided that the creditor may at any time by notice in writing, require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee does not within six months after receiving the notice, signify in writing to the creditor his election to exercise the power he shall not be entitled to exercise it, and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official assignee shall vest in the creditor and the amount of his debt shall be reduced by the amount at which the security has been valued

Amendment of valuation

13 Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee or the Court, that the valuation and proof were made *bona fide* on mistaken estimate, or that the security has diminished or increased in value since its previous valuation, but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order unless the official assignee shall allow the amendment without application to the Court

Refund of excess received

14 Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he *would have been entitled on the amended* valuation, or, as the case may be shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he has failed to
money is
entitled to
amendment

Amendment where security subsequently realized

15 If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor

Exclusion from sharing in dividend

16 If a secured creditor does not comply with the foregoing rules, he shall be excluded from all shares in any dividend

Limit of receipt

17 Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act

Taking Accounts of Property Mortgaged and of the Sale thereof

Inquiry into mortgage, etc

18 Upon application by any person claiming to be a mortgagee of any part of the insolvent's real or leasehold estate and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the official assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances, and if it is found that such person is such mortgagee and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal interest and costs due upon such mortgage and of the rents and profits or dividends, interest or other proceeds received by such person or by any other person by his order or for his use in case he has been in possession [illegible] part thereof and the Court,
e
d
is

perative rtgagee

chedule to be before dity of the mortgage even though the parties consent to agree to his doing so 47 Cal 721 = 60 Ind Cas 889 An English mortgage is not within this section 22 C W N 793

Conveyance

19 All proper parties shall join in the conveyance to the purchaser, as the Court directs

Proceeds of sale

20 The monies to arise from such sale, shall be applied ... the first place, in of and and of official assignee, and in the next place in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee, for principal, interest and costs, and the surplus of the sale monies (if any) shall then be paid to the official assignee But if the monies to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared

Proceedings on inquiry

21 For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs

Periodical payments

Periodical payments

22 When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest

Interest

23 (1) On any debt or su

rate not exceeding six per centum per annum—

(*a*) If the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or

proved have been paid in full

Debt payable at a future time.

Deb payable in future

24 A creditor may prove for a debt not payable when the debtor is adjudged ... and may ... ors, ... the rate of six per centum per annum ... to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or rejection of proofs

25 The official assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it If he rejects a proof, he shall state in writing to the credi-

Admission or rejection of proof

26 ..

Court improperly received

expunge the proof or reduce its amount

27 The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere in the matter, or in the case of a composition or scheme upon the application of the insolvent

Power for Court to expunge or reduce proof

Notes—An admission by an attorney, unless satisfactorily explained away furnishes cognate evidence against the client 20 C W N 995

THE THIRD SCHEDULE.

(*Repealed by Act X of 1914*)

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867 *

ACT NO XXV OF 1867

RECEIVED THE G G 's ASSENT ON THE 22ND MARCH, 1867

An Act for the regulation of Printing presses and Newspapers, for the preservation of copies of books printed in British India and for the registration of such books

WHEREAS it is expedient to provide for the regulation of printing presses and of periodicals containing news for the preservation of copies† of every book printed or lithographed in British India, and for the registration of such books, It is hereby enacted as follows —

Preamble

PART I

PRELIMINARY

Interpretation clause

1 In this Act, unless there shall be some thing repugnant in the subject or context,—

"book" includes every volume, part or division of a volume, and pamphlet in any language, and every sheet of music, map, chart or plan separately printed or lithographed

"Book"

'British India' means the territories which are or shall be vested in Her Majesty or Her successors by Statute 21 and 22 Vict, cap 106 (*an Act for the better Government of India*)‡

'British India'

"Editor" means the person who controls the selection of the matter that is published in a "newspaper" §

Editor

* Th ... (XIV of 1897)
... ly inserted before the
... of 1890 s 8
... Vales, Island, Singa
... Act XII of 1891
... of 1922

"Magistrate" "*Magistrate*" means any person exercising the full powers of a Magistrate, and includes a Magistrate of Police ,*

"Newspaper "Newspaper' means any printed periodical work containing public news or comments on ' public news ' †

‡ And in every part of British India to which this Act shall extend, "Local Government' shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner

2 [*Repeal of Act XI of 1835*] *Repealed by Act XIV of 1870.*

PART II

Of Printing presses and Newspapers

3 Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing and (if the book or paper be published) "the name"§ of the publisher, and the place of publication

Particulars to be printed on books and papers

Object —The intention of this section is to inform the public who the responsible printer or publisher was and to convey that information on the face of the paper—16 M 443

Printer —includes printer of a portion—14 Bom L R 40

Publisher —is a man who causes a book to be printed and offers it to the public for sale A W N 1887, 95 , but does not include a vendor of newspaper or book 23 C 414

P ... achine is printing A I R 1931 Pat ... *must be read in the narrow sense* of to ... a young school boy has been found to be ... ts without printer's name, etc , the burden is on the prosecution to prove that the paper was printed within British India. 35 C W N 778

4 No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be

Keeper of printing press to make declaration

"I, *A B*, *declare that I have a press for printing at*— '

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

Notes —Change of place does not require a new declaration on the part on the printer 9 P R, 1889 Cr A declaration made under this section is intended by the legislature to have a certain effect, namely, that of fastening responsibility or the conduct of the press on the person declaring in respect of matters where public interests are involved 12 Bom L R 675 No fresh declaration need be filed in the case of any press which has once have declared and which continues at the same address for the change in the person of the keeper of the press A I R. 1931 Oudh 81

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* ... the words "and a Justice of ... d ' Police," has been ... of 1922. ... been omitted.

Rules as to publication of printed periodicals containing public news

5 No "newspaper"* shall be published in British India except in conformity with the rules hereinafter laid down

'(1) Every copy of every such 'newspaper' shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of that newspaper, *

(2) The printer and the publisher of every such 'newspaper' shall appear "in person or by agent authorized in this behalf in accordance with rules under section 20 before a District Presidency or Sub divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published or such printer or publisher 'resides'* and shall make and subscribe, in duplicate, the following declaration

'I, *A B*, declare that I am the printer [*or* publisher, *or* printer and publisher] of the 'newspaper'* entitled and printed [*or* published, *or* printed and published, *as the case may be*] at

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted

(3) As often as the place of printing or publication is changed, a new declaration shall be necessary

(4) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India a new declaration from a printer or publisher resident within the said territories shall be necessary

'Provided that no person who has not attained majority in accordance with the provisions of the Indian Majority Act 1875, or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this section, nor shall any such person edit a newspaper "†

Prima facie evidence—Such declaration is a *prima facie* evidence of publication and it throws on the accused the burden of showing that the actual publisher was not the person mentioned in the declaration 9 M 387=1 Weir 576

Authentication of declaration

6 Each of the two originals of every declaration so made and subscribed as is aforesaid shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made

Deposit

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature or 'other principal Civil Court of original jurisdiction for the place where ‡ the said declaration shall have been made

Inspection and supply of copies

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration attested by the seal of the Court which has the custody of the original on a payment of a fee of two rupees

Office copy of declaration to be *prima facie* evidence

7 In any legal proceeding whatever as well civil as criminal the production of a copy of such declaration as is aforesaid attested by the seal of some Court empowered by this Act to have the custody of

* Substituted by Act 14 of 1922

† The words within quotations have been added by Act XIV of 1922

‡ In s 6 the words quoted have been substituted for the words other Court within the local limits of whose ordinary original civil jurisdiction — See Act X of 1890, s 3

such declarations, "or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor ,"* shall be held (unless *the contrary be proved) to be sufficient evidence, as against the person whose* name shall be subscribed to such declaration, "or printed on such newspaper as the case may be' * that the said person was printer or publisher, or printer and publisher (according as the *words of the said declaration may be) of* every portion of every "newspaper' * whereof the title shall correspond with the title of the "newspaper * mentioned in the declaration, "or the editor of every portion of that issue of the newspaper of *which a copy is produced* "*

[illegible] be presumed to know of all he was [illegible] 1 P R 1905 Cr But if he makes [illegible] may be execused 38 C 227 See [illegible]esumption about knowledge under the case of pamphlet alleged to contain seditious matters 32 Cr L J 681=131 Ind Cas 273

New delaration by persons who have signed declaration and subsequently ceased to be printers or publishers

8 Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the newspapers' * mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following *declaration* —

"I, *A B*, declare that I have ceased to be the printer [*or* publisher, *or* printer and publisher] of the "newspaper' * entitled ".

Authentication and filing

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration

Inspection and supply of copies

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter *declaration, attested by the seal of the Court having custody of the original,* on payment of a fee of two rupees

Putting copy in evidence

In all trials in which a copy attested, as is aforesaid, of the former declaration *shall have been put in evidence, it shall* be lawful to put in evidence a copy, attested as is aforesaid of the latter declaration, and the former declaration shall not be *taken to be evidence* that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the "newspaper * therein mentioned

Person whose name has been incorrectly published as editor may make a declaration before a Magistrate

'*8A* † *If* any person, whose name has appeared as editor on a copy of a newspaper claims that he was not the editor of the issue on which his name has so appeared, he *may*, within two weeks of his becoming aware that his name has been so published, appear before a District, Presidency or Sub-divisional Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry or causing such inquiry to be made as he may consider necessary is

* The words within quotations have been added by Act XIV of 1922
† Section 8A and the words within quotations have been added by Act XIV of 1922

satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper

The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period

PART III *

Delivery of Books

Copies of books printed after commencement of Act to be delivered gratis to Government

9 Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints or other engravings belonging thereto finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government as follows, that is to say :—

(*a*) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy and,

(*b*) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies, as the Local Government may direct

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed

The publisher or other person employing the printer shall, at a reasonable time before the expiration of thesaid month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid

Nothing in the former part of this section shall apply to—

(*i*) any second or subsequent edition of a book in which edition no additions or alterations either in the letter press or in the maps, book prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(*ii*) any "newspaper" † published in conformity with the rules laid down in section 5 of this Act

Notes —The expression 'delivered out of the press' cannot be held to be equivalent to be printed, and that the time under time s 9 (a) should be computed from when the process of making the book is completed 49 A 315=25 A L J 105=99 Ind Cas 1032=28 Cr L J 232=7 A I C R 20=A I R 1927 All 237

Receipt for copies delivered under section 9

10 The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor

Disposal of copies delivered under section 9

11 The copy delivered pursuant to clause (*a*) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine Any copy or copies delivered

* Part III has been substituted by Act X of 1890, s 4
† The words within quotations have been substituted by Act XIV of 1922

pursuant to clause (*b*) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State as the case may be

Copies of newspaper printed in British India to be delivered *gratis* to Government

"11A * The printer of every newspaper in British India shall deliver at such place and to such officer as the Local Government may, by notification in the local official Gazette, direct, ;and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published"

PART IV.

PENALTIES.

Penalty for printing contrary to rule in section 3

12 Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding "two thousand" rupees or by simple imprisonment for a term not exceeding "six months"† or by both

Notes—Omission to comply with section 3 is punishable under s.12—5 P. R 1909 Cr Declaration in the name of manager can be given with the permission of the Magistrate A I R 1931 Oudh 81 Under this section, the intention to commit an offence is not neces
than in accordance w
business of the press
and the business is h
manager A L R 19
Cas 685

Penalty for keeping press without making declaration required by section 4

13 Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding "two thousand"† rupees, or by simple imprisonment for a term not exceeding" six months",† or by both

Punishment for making false statement

14. Any person who shall, in making any declaration under the authority

before a Magistrate, be punish
and imprisonment for a term not exceeding "six months†"

Penalty for printing or publishing periodicals without conforming to rules

15 Whoever shall "edit"† print or publish any "newspaper"† without conforming to the rules hereinbefore laid down, or whoever shall "edit"† print or publish, or shall cause to be "edited"† printed or published any "newspaper"† knowing that the said rules have not been observed with respect to "that newspaper"† shall, on conviction before a Magistrat be punished with fine not exceeding "two thousand"‡ rupees or imprisonment for a term not exceeding "six months"† or both

annul declarations made under punishable under this section—

* ... been added by Act XIV of 19..

ted ...

Penalty for not delivering books or not supplying printer with maps

16 * If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered

If any publisher or other person employing any such printer shall neglect to supply him in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied

Penalty for failure to supply copies of newspapers *gratis* to Government

16A † If any printer of any newspaper published in British India neglects to deliver copies of the same in compliance with section 11A, he shall on the complaint of the officer to whom copies should have been delivered or of any person authorised by that officer in this behalf, be punishable, on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed with fine which may extend to fifty rupees for every default

Recovery of forfeitures and disposal thereof and of fines

17 * Any sum forfeited to the Government under section 16 ‡ may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office in th manner authorized by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code for the levy of a fine

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct

PART V.

Registration of Books.

Registration of memoranda of books

18 There shall be kept at such office and by such officer as the Local [illegible] behalf a book memorandum of every book which shall have been delivered 'pursuant to clause (*a*) of the first paragraph of section 9 § of this Act Such memorandum shall (so far as may be practicable) contain the following particulars, that is to say —

Contents of memorandum

---

* Ss 16 and 17 have been substituted by Act X of 1890, s 5

† Section 16 A has been inserted by Act XIV of 1922

‡ The words within quotations have been substituted by Act X of 1923

§ In s 18 the words, letter and figure quoted have been substituted for the words and figures 'pursuant to section 9 —See Act X of 1890 s 6

pursuant to clause (*b*) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State as the case may be

Copies of newspaper printed in British India to be delivered *gratis* to Government

"11A* The printer of every newspaper in British India shall deliver at such place and to such officer as the Local Government may, by notification in the local official Gazette, direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published"

PART IV.

PENALTIES.

Penalty for printing contrary to rule in section 3

12 Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding "two thousand" rupees or by simple imprisonment for a term not exceeding "six months"† or by both

Notes—Omission to comply with section 3 is punishable under s 12—5 P. R. 1909 Cr Declaration *in the name of manager can be given with the permission of the* Magistrate A I R 1931 Oudh 81 Under this section, the intention to commit an offence is not necessary The mere fact of printing the book or paper otherwise [illegible]

manager A L R 1933 Rang 46=A I R 1933 Rang 4=34 Cr L J 262=141 Ind Cas 685

Penalty for keeping press without making declaration required by section 4

13 Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding "two thousand"† rupees, or by simple imprisonment for a term not exceeding" six months",† or by both

Punishment for making false statement

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding "two thousand"‡ rupees, and imprisonment for a term not exceeding "six months‡".

Penalty for printing or publishing periodicals without conforming to rules

15. Whoever shall "edit"† print or publish any "newspaper"† without conforming to the rules hereinbefore laid down, or whoever shall "edit"† print or publish, or shall cause to be "edited'† printed or published any "newspaper"† knowing that the said rules have not been observed with respect to "that newspaper"† shall, on conviction before a Magistrat be punished with fine not exceeding "two thousand"‡ rupees or imprisonment for a term not exceeding "six months"† or both

Notes—The Local Government is empowered to annul declarations made under this Act and any one acting against such order is punishable under this section—*Vide* ss 7 and 8 of Act 7 of 1908

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* [illegible]

† [illegible]

ted [illegible]

‡ [illegible]

16.* If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered

Penalty for not delivering books or not supplying printer with maps

If any publisher or oth [illegible]

shall for every such default forfeit [illegible] fifty rupees as such a Magistrate [illegible] aforesaid, determine to be in the [illegible] default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied

16A † If any printer of any newspaper published in British India neglects to deliver copies of the same in compliance with section 11A, he shall, on the complaint of the officer to whom copies should have been delivered or of any person authorised by that officer in this behalf, be punishable, on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed with fine which may extend to fifty rupees for every default.

Penalty for failure to supply copies of newspapers gratis to Government

17 * Any sum forfeited to the Government under 'section 16"‡ may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorized by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code for the levy of a fine

Recovery of forfeitures and disposal thereof and of fines

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct

PART V.

Registration of Books.

18 There shall be kept at such office, and by such officer as the Local Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered "pursuant to clause (*a*) of the first paragraph of section 9"§ of this Act Such memorandum shall (so far as may be practicable) contain the following particulars, that is to say —

Registration of memoranda of books

Contents of memorandum

---

* Ss. 16 and 17 have been substituted by Act X of 1890, s 5

† Section 16 A has been inserted by Act XIV of 1922

‡ The words within quotations have been substituted by Act X of 1923

§ In s 18 the words, letter and figure quoted have been substituted for the words and figures "pursuant to section 9 '—See Act X of 1890, s 6

(1) the title of the book and the contents of the title page, with a translation into English of such title and contents, when the same are not in the English language :
(2) the language in which the book is written :
(3) the name of the author, translator or editor of the book or any part thereof :
(4) the subject :
(5) the place of printing and the place of publication :
(6) the name or firm of the printer and the name or firm of the publisher
(7) the date of issue from the press or of the publication :
(8) the number of sheets, leaves or pages
(9) the size :
(10) the first, second or other number of the edition
(11) the number of copies of which the edition consists :
(12) whether the book is printed or lithographed :
(13) the price at which the book is sold to the public and
(14) the name and the residence of the proprietor of the copyright or of any portion of such copyright

Registration of memorandum

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the "copy thereof pursuant to clause (*a*) of the first paragraph of section 9 "*

Publication of memoranda registered

19 The memoranda registered during each quarter in the said Catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State, and to the "Government of India"† respectively

[*Effect of registration*]—*Rep by Act III of 1914*

PART VI

MISCELLANEOUS.

Power to make rules

20 The Local Government shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules

Publication

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette

Power to exclude any class of books from operation of Act

21. "The Governor General in Council or"‡ the "Local Government"‡ may, by notification in the "*Gazette of India* or"§ the "*Local Gazette*"‡ as the case may be exclude any class of books "or papers"‖ from the operation of the whole or any part or parts of this Act

22 *Repealed by Act X of 1890.*
23 *Repealed by Act XIV of 1870.*

[illegible] the words
[illegible]
§ Added by Act II of 1923
‖ The words "or papers" have been added by Act II of 1915

THE PROMISSORY NOTES (STAMP) ACT, 1926

ACT NO. XI OF 1926

RECEIVED THE G G 's ASSENT ON THE 2ND MARCH, 1926

An Act to provide for the validation of certain promissory notes

WHEREAS it is expedient to provide for the validation of certain promissory notes stamped with postage stamps of the denomination of two or four annas , It is hereby enacted as follows —

Short title and extent

1 (1) This Act may be called the Promissory Notes (Stamp) Act 1926.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

Validation of certain promissory notes

2 A promissory note payable on demand for an amount exceeding two hundred and fifty rupees, executed after the 30th day of September, 1923, and before the 5th day of January, 1925, and stamped with an adhesive stamp or adhesive stamps inscribed for postage and of the value required by the law in force at the time the promissory note was executed, shall not, by reason only of the fact that the stamp or the stamps or any of them is or are of a description other than that required by such law, be deemed for any of the purposes of the Indian Stamp Act 1899, or of the rules made thereunder, not to have been duly stamped

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THE PROPERTY IN LAND ACT, 1837 *

ACT NO IV OF 1837

PASSED BY THE GOVERNOR GENERAL ON THE 17TH APRIL ,1837

All subjects of Crown empowered to hold land

1 IT shall be lawful for any subject of His Majesty to acquire and hold in perpetuity, or for any term of years, property in land or in any emoluments issuing out of land in any part of the territories of the East India Company

Rules applied to holding under Act

2 All rules which prescribe the manner in which such property as is aforesaid may now be acquired and held by natives of the said territories shall extend to all persons who shall, under the authority of this Act, acquire or hold such property

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THE PROVIDENT FUNDS ACT, 1925

ACT NO XIX OF 1925

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 27TH AUGUST, 1925

An Act to amend and consolidate the law relating to Government and other Provident Funds

WHEREAS it is expedient to amend and consolidate the law relating to Government and other Provident Funds It is hereby enacted as follows —

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* This title has been substituted by the Repealing and Amending Act (I of 1903) Sch I

Short t tle extent and com *mencement*

1 (1) This Act may be called the Provident Funds Act 1925

(2) It extends to the whole of British India including British Baluchistan

(3) It shall come i to force on such date as the Governor General in Council may by notification in the *Gazette of India* appoint

Notes —An ass gnment of Provi lent Fund in favour of an illeg timate son is vo d 64 Ind Cas 62=13 Bur L T 21?

Defin t ons

2 In this Act unless there is anything repug nant in the subject or context —

(a) Compuls ry deposit means a subscription to or deposit in, a Provident Fund which under the rules of the Fund, is not until the happen ing of some specified contingency repayable on demand otherwise than for the purpose of the payment of premia in respect of a policy of life insurance, "or the payment of subscriptions or premia in respect of a family pension fund * and includes any contribution† and any interest or increment which has accrued under the contribution rules of the Fund on any such subscription deposit, or contribution and also any such subscription deposit, contribution, interest or increment remaining to the credit of the subscriber or depositor after the happening of any such contingency

(b) Contribution' means any amount credited in a Provident Fund by any authority administering the fund ‡ by way of addition to a subscrip tion to or depos t or balance at the credit of an individual account in * the I und and Contributory Provident Fund means a Provident Fund the rules of which provide for the crediting of contributions

( ) Dependant means any of the following relatives of a deceased subscriber to or a depositor in a Provident Fund namely, a wife husband parent child minor brother unmarried sister and a deceased son s widow and child and where no parent of the subscriber or depositor is alive, a paternal grand parent ,

(d) Government Provident Fund means a Provident Fund other than a Railway Provident Fund constituted by the authority of the Government for any class or classes of its employees or of persons employed in educational institutions or employed by bodies existing solely for educational purposes §

(e) Provident Fund means a fund in which subscriptions or deposits of any class or classes of employees are received and held on their individual

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Governor General in Counc l or a Local Government or

(ii) the manager of any railway or tramway administered by the Governor General in Council or a Local Government

and includes in any case referred to in sub clause (ii) the Governor General in Cc

constituted by

the or classes of its

employees

* Substituted by Act I of 1930

† Certa n words here omitted by Act I of 1930

‡ Substituted by Act 28 of 1925

§ Substituted by Act 7 of 1927

‖ Certain words repealed by Act I of 1930 have here been omitted

Notes Officers of Court of Wards are government employees, and accumulated
not assessable to income tax A I R
deceased are not defendants as defined
26 S L R 429=A I R 1933 Sind 101

3 (1) A compulsory deposit in any Government or Railway Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, any such compulsory deposit

Protection of compulsory deposits

(2) Any sum standing to the credit of any subscriber to, or depositor in, any such Fund at the time of his decease and payable under the rules of the Fund to any dependant of the subscriber or depositor, or to such person as may be authorized by law to receive payment on this behalf, shall, subject to any deduction authorized by this Act and, save where the dependant is the widow or child of the subscriber or depositor, subject also to the rights of an assignee under an assignment made before the commencement of this Act, vest in the dependant, and shall, subject as aforesaid, be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor.

Notes—Money standing to the credit of a retired employee is attachable 1922 Cal 196, 5 Bom L R 454 But the deposit is exempt from attachment 80 Ind Cas 424=3 Pat 74=6 Pat L T 129=1924 P 524 (2), see also 5 Bom L R 454; 6 Bom L R 921=29 B 259 The Act does not empower the Government to prescribe by rules the procedure which shall be followed for the recovery of debts due by depositors for which a decree has been obtained in the Civil Court 80 Ind Cas 424=3 Pat 74, see also 27 C W N 472, 29 B 259, 46 C 952 Compulsory deposit paid under the Provident Funds Act after it has been actually paid to an

within its natural meaning, for under s 2(4) of the Provident Funds Act of 1897, it includes any contribution which may have been credited in respect of, and any interest or increment which may have been accrued on, such subscription or deposit under the rules of the Fund The deposit does not lose its character as 'compulsory deposit' by the subscriber's leaving the service of the company 29 B 259 The deposit which a Railway servant makes towards the Provident Fund is 'compulsory deposit" and it does not cease to be so when he leaves the service of the company The deposit when it is made was not repayable on demand, and therefore at that time was "a compulsory deposit' and having once acquired that character with the
29 B 259=6 Bom L R 921 T
s 4 of Act IX of 1897 should be l
after the coming into operation o
paid to the dep
1931 Mad 797
f his dependants to that extent it

meaning of that section and that in respect of it official assignee shall have no claim of any kind A L R 1933 Rang 139=A I R 1933 Rang 148=143 Ind Cas 771

4 (1) When under the rules of any Government or Railway Provident Fund the sum standing to the credit of any subscriber or depositor, or the balance thereof after the making of any deduction authorized by this Act, has become payable, the officer whose duty it is to make the payment shall pay the sum or balance, as the case may be, to the subscriber or depositor, or, if he is dead, shall—

Provisions regarding repayments

(a) if the sum or balance, or any part thereof, vests in a dependant under the provisions of section 3, pay the same to the dependant or to such person as may be authorised by law to receive payment on his behalf, or

(b) if the whole sum or balance, as the case may be, does not exceed five thousand rupees, pay the same, or any part thereof which is not payable under clause (a) to any person nominated to receive it under the rules of the Fund or, if no person is so nominated, to any person appearing to him to be otherwise entitled to receive it, or

(c) in the case of any sum or balance, or any part thereof, which is not payable to any person under clause (a) or clause (b) pay the same —

(i) to any person nominated to receive it under the rules of the Fund on production by such person of probate or letters of administration evidencing the grant to him of administration to the estate of the deceased or a certificate granted under the Succession Certificate Act, 1889, or under the Bombay Regulation VIII of 1827, entitling the holder thereof to receive payment of such sum, balance or part, or

(ii) where no person is so nominated, to any person who produces such probate letters or certificate

Provided that where the whole or any part of any sum standing to the credit of the subscriber or depositor has been assigned to any other person before the commencement of this Act, and notice in writing of the assignment has been received by the officer from the assignee, the officer shall, after making any [illegible] payment due under clause (a) to or subscriber or depositor—

or, if he is dead, the person to whom in the absence of any valid assignment the sum or balance would be payable under this sub section gives his consent in writing pay the sum or part of the balance thereof, as the case may be, to the assignee or

(ii) if such consent is not forthcoming withhold payment of the sum part of balance as the case may be, pending a decision of a competent Civil [illegible]

[illegible] on (1) shall be a full [illegible] as the case may be, from all liability in respect of so much of [illegible] g to the credit of the subscriber or depositor as is equivalent to the amount so paid

[illegible] to the credit of a subscriber to a Government [illegible] his decease and payable to the widow and [illegible] idow and children free from any debt or [illegible] s widow or children 64 Ind Cas 62=13 Bur L T 212

5 (1) Subject to the provisions of this Act but otherwise notwithstanding [illegible] time being [illegible] estamentary or otherwise, by a subscriber [illegible] or Railway Provident Fund of the sum st[illegible] of any part thereof, any nomination duly [illegible] the Fund which purports to confer upon any person the right to receive the whole or any

Rights of nominees

part of such sum on the death of the subscriber or depositor, shall be deemed to confer such right absolutely, until such nomination is varied by another nomination made in like manner or is expressly cancelled by the subscriber or depositor by notice given in such manner and to such authority as is prescribed by those rules

(2) Notwithstanding anything contained in the Succession Certificate Act, 1889, or the Bombay Regulation VIII of 1827, any such person shall, on the death of the subscriber or depositor, be entitled to the grant of a certificate under that Act, or that Regulation, as the case may be, entitling him to receive payment of such sum or part, and such certificate shall not be deemed to be invalidated or superseded by any grant to any other person of probate or letters of administration to the estate of the deceased

Notes —Where a person is nominated under the rules framed under this Act to receive the fund on the demise of the employee, the nominee is not entitled to the fund absolutely, but he takes only on behalf of the estate A I R 1926 Sind 57

Power to make deductions

6 When the sum standing to the credit of any subscriber or depositor in any Government or Railway Provident Fund which is a contributory Provident Fund becomes payable, there may, if the authority "[specfied in this behalf in the rules of the Fund"*] so directs, be deducted therefrom and paid to "Government or the Railway administration, as the case may be' *—

(a) any amount due under a liability incurred by the subscriber or depositor to "Government or the Railway Administration, * but not exceeding in any case the total amount of any contributions credited to the account of the subscriber or depositor and of any interest or increment which has accrued on such contributions , or

(b) where the subscriber or depositor has been dismissed from "his employment' * for any reasons specified in this behalf in the rules of the Fund, or where he has resigned such employment within five years of the commencement thereof, the whole or any part of the amount of any such constributions, interest and increment

Protection for acts done in good faith

7 No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act

Power to apply the Act to other Provident Funds

8.† (1) The Local Government may, by notification in the Local Official Gazette, direct that the provisions of this Act shall apply to any Provident Fund established for the benefit of its employees by any local authority within the mea[illegible] on the making of such decl[illegible] Provident Fund were a [illegible] were the Government

(2)‡ The Governor General in Council may, by notification in the *Gazette of India* direct that the provisions of this Act shall apply to any Provdent Fund established for the benefit of the employees of any of the institutions specified in the schedule, or of any group of such institutions, and on the making of such declaration, this Act, shall apply accordingly, as if such Provident Fund were a Government [illegible] custody of the Fund were the Governm[illegible] as if the authority making the contribut[illegible] the Government

* Substituted by Act 28 of 1925
† Section 8 has been numbered as sub section (1) of section 8 by Act 1 of 1930
‡ Added by Act I of 1930

*(3) The Governor General in Council may, by notification in the *Gazette of India*, add to the schedule the name of any public institution he may deem fit, and any such addition shall take effect as if it had been made by this Act

Savings as to estates of soldiers

9 Nothing in section 4 or section 5 shall apply to money belonging to any estate for the purpose of the administration of which the Regimental Debts Act, 1893, applies

10 [*Repeals —Repealed by Act XII of 1927*]

SCHEDULE*

LISTS OF INSTITUTIONS

See sub section (2) of section 8

1 The Pasteur Institute of India Kasauli
2 The Calcutta Improvement Tribunal
3 A Court of Wards
4 The Indian Central Cotton Committee
5 The Trustees for the European Hospital for mental diseases at Ranchi
6 The National Association for supplying female medical aid to the women of India
7 A College affiliated to a University established by Statute

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PROVIDENT INSURANCE SOCIETIES ACT, 1912

ACT NO V OF 1912.

RECEIVED THE G. G s ASSENT ON THE 18TH MARCH, 1912

An Act to provide for the regulation of Provident Insurance Societies

WHEREAS it is expedient to provide for the regulation of Provident Insurance Societies , It is hereby enacted as follows —

PRELIMINARY

Short title and extent

1 (1) This Act may be called the Provident Insurance Societies Act, 1912 , and

(2) It extends to the whole of British India, inclusive of British Baluchistan the Sonthal Parganas and the Pargana of Spiti

Notes —' The object of this Bill is to provide for the better control of Provident Insurance Societies, that is societies, not being Life Assurance Companies proper, which undertake insurances on births, marriages or deaths

"The attention of the Government of India has from time to time been drawn to the co existence of large numbers of such societies in different parts of India, and

' The main provisions of the present Bill are designed to secure (1) that all

* Added by Act I of 1930

with the development of provident societies of a useful character '—*Statement of Objects and Reasons*

Extent—This Act has been declared in force in Arakan Hill District by Reg 1 of 1916 s 2

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction :

(2) "financial year" means each period of twelve months at the end of which the balance of the accounts of any Provident Insurance Society is struck, or, if no such balance is struck, then the calendar year

(3) "life assurance business" means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life :

(4) "policy of assurance on human life' means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life .

(5) "policy holder means the person who for the time being is the legal holder of the policy for securing the contract with the Provident Insurance Society ·

(6) where a Provident Insurance Society grants annuities upon human life, "policy" includes the instrument evidencing the contract to pay such an annuity and "policy holder' includes annuitant ·

(7) 'prescribed' means prescribed by rules made under this Act :

(8) "Provident Insurance Society" means any person who, or body of persons whether corporate or unincorporate which, receives premiums or contributions for insuring money to be paid on the birth, marriage or death of any person or on the happening of such other contingency or class of contingency as may be prescribed and

(9) "Registrar means any person who may be appointed by the Local Government to perform the duties of the Registrar under this Act

Notes—'A definition clause does not necessarily, in any statute apply in all [illegible] defined expressions [illegible] the words may be [illegible] *Padden*, (1926) S C [illegible] finitions of the Indian [illegible] es of the Bill We [illegible] if contained one and [illegible]

Provident Insurance Society—'We have amended the definition of Provi- [illegible]

Comittee

Clause (8)—The Provident Insurance Societies Act was intended to prevent a company from embarking in the business of life insurance unless and until it had been registered under the Act and section 2 sub section (8) clearly lays down that whether the Society already in existence is a corporate company before or whether its share capital is divided into shares or not, registration under the Act is necessary before business under the Act can be carried on under the conditions laid down in the Act 18 C W N 1182=42 C 300=16 Cr L J=149 27 Ind Cas 213 ; see also 40 C 570

Application of Act

3 Nothing in this Act shall apply to any Provident Insurance Society carrying on life assurance business, which undertakes to pay on any life assurance policy or series of life assurance policies on any one life, an annuity exceeding fifty rupees or a gross sum exceeding five hundred rupees, or which receives or undertakes to receive by way of premium or contribution for life assurance on any one life any sum exceeding two hundred and fifty rupees where the said premiums or contributions are payable for one year or a limited number of years, or exceeding twenty five rupees in any one year where the premiums or contributions are unlimited in number and terminable on death or the occurence of an uncertain event

Provided that in determining whether this Act applies to any Provident Insurance Society carrying on life insurance businees contracts entered into by the society before the commencement of this Act shall not be taken into consideration

Notes — We have amended clause 3 by omitting any reference to the amount of share capital as we consider that the proper basis of distinction between Life Assurance Companies and the Societies should be the character of the business done and we have altered the clause so as to make the undertaking to pay not the actual payment made the test which should be applied We have also reduced the money lim ts of the payments and receipts specified in this clause following in th s [illegible] Chamber of Commerce We have [illegible] society to reduce its life assurance [illegible] in order to escape being made sub [illegible] —*Report of the Select Committee*

General

Insurable interest

4 No Provident Insurance Society shall receive any primium or contribution for insuring money to be paid on the death of any person other than the person paying such premium or contribution or the wife, husband, child parent, brother or sister of such person

Provision to be made by rules

5 Every Provident Insurance Society shall by its rules—

(*a*) specify the object name and registered office of the society

(*b*) prescribe the proportion of the annual income of the society derived from premiums or contributions which may be disbursed for the expenses of management of the society ,

(*c*) in the case of a society which by rule or practice divides any part of the funds thereof, provide for the payment of all debts due by the society existing at the time of division before any such division has taken place , and

(*d*) provide for any other matters which may be prescribed

[illegible] of making its meaning [illegible] we recognise that a society [illegible] in a satisfactory state we [illegible] would operate harshly —

Registration of Provident Insurance Societies

6 (1) Every Provident Insurance Society shall, within three months from the commencement of this Act, or, if established after the commencement of this Act, before it receives any premium or contribution, apply to the Registrar for that part of British India in which the office of the society is situate for registration under this Act, and shall deliver to him a copy of the rules of the society

(2) The Registrar shall, on being satisfied that such rules comply with the provisions of this Act, acknowledge the receipt of the rules and register the society and its rules

(3) If the Registrar is not satisfied that the rules or any of them comply with the provisions of this Act, he shall send to the provident Insurance Society a notice by post stating in what respect such rule or rules is or are not in accordance with the provisions of this Act, and calling upon such society to deliver to him an amended rule or rules within sixty days

(4) On receipt of a notice under sub section (3), the Provident Insurance Society may within sixty days deliver to the Registrar an amended rule or rules in conformity with this Act and the Registrar shall thereupon acknowledge the receipt of the rules and register the society and its rules as *hereinbefore provided.*

Notes—"We have amended clause 6 to make it clear that the application for registration should be to the Registrar for that part of British India in which the office of the Society is situate'—*Report of the Select Committee* The Act is intended to prevent a company from embarking in the business of life insurance unless and until it had been registered under the Act 18 C W N 1182=42 C 300, see also 40 C 570

Unregistered Society not to receive premium or contribution

7 No Provident Insurance Society shall receive any premium or contribution, unless it is registered in accordance with the provisions of this Act

Provided that the prohibition shall only apply to a society established before the commencement of this Act—

(*a*) when such society has applied for registration in accordance with the provisions of section 6, sub section (1)—from the date of the order of the Registrar refusing registry

(*b*) when such society has not applied as aforesaid—after three months from the commencement of this Act

Notes—'The provision made by us regarding the cancellation of the registry of a society made it necessary to amend clause 7 and we have accordingly re drawn the clause—*Report of the Select Committee*

Amendment of rules

8 (1) No amendment of any rule of a Provident Insurance Society shall be valid until the same has been registered under this Act, for which purpose a copy of the amended rule shall be sent to the Registrar

(2) The Registrar shall, on being satisfied that any amendment of a rule is not contrary to the provisions of this Act, issue to the society an acknowledgment of the registration of the same

Notes—"We think it necessary to require that all the particulars specified in section 47 of the Indian Companies Act 1882 should be furnished in the register of members prescribed by clause 10 of the Bill and we have amended the clause merely requiring the names and addresses of the members of the society to be recorded—*Report of the Select Committee*

Right to supply of copies of rules

9. Every Provident Insurance Society shall, on demand, deliver free of cost to any member of the society a copy of the rules of the society, and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee

Notes—According to s 75 of the English Industrial and Provident Societies Act, 1893 (56 & 57 Vict c 39) every copy of the rules bearing the seal or stamp of the central office is admissible in evidence without further proof

Register of members

10 Every Provident Insurance Society which is not registered under the Indian Companies Act 1882, shall cause to be kept in the prescribed form a register of names and addresses of its members

Notes—According to section 34 of the English Industrial and Provident S[illegible] Act, 1893 (56 and 57 Vict c 39) the register of list of members or shares '

any society is *prima facie* evidence of (1) the names addresses and occupations of the members and the number of shares held by each member, the numbers of such shares, if numbered and the amount paid or agreed to be considered paid on them, (2) the date of entry on the register in proof of membership, (3) the date of cessation of membership

Publication of authorized subscribed and paid up capital

11 Where any notice, advertisement or other official publication of a Provident Insurance Society contains a statement of the amount of the authorized capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up

Notes—"We have added a new clause 11 reproducing clause 18 of the Life Assurance Companies Bill as we consider the provision a salutary one in the case of these societies also"—*Report of the Select Committee*

Office

12 Every Provident Insurance Society which is not registered under the Indian Companies Act, 1882, shall have an office on the outside of which it shall display and keep displayed its name in a conspicuous position in legible letters, to which all communications and notices may be addressed, and shall give notice to the Registrar of the situation of such office and of any change therein

Notes—We think it desirable that the name of the Society should be publicly displayed at its office and we have amended clause 12 to provide for this—*Report of the Select Committee*

Revenue account and balance sheet

13 Every Provident Insurance Society shall, at the expiration of each financial year, prepare a revenue account and balance sheet in the prescribed form and verified in the prescribed manner, and shall cause them to be audited by an auditor possessing the prescribed qualifications

Notes—Under section 15 of the English Industrial and Provident Societies Act, 1892 (56 and 57 Vict, c 39) every member or person interested in the funds of the society is entitled to receive gratuitously a copy of the annual return

Delivery and publication of the revenue account etc

14 Every Provident Insurance Society shall within six months of the expiration of each financial year, deliver to the Registrar the revenue account and balance sheet required by section 13, and shall publish them in the prescribed manner

Notes—This section corresponds to section 20 of the English Industrial and Provident Societies Act, 1893 (56 and 57 Vict, c 39)

Record of insurances effected on life other than life of person insuring

15 Every Provident Insurance Society shall maintain in the prescribed form a record of every insurance effected on a life other than the life of the person insuring, and shall deliver a copy of such record to the Registrar, together with the balance sheet and revenue account

Inspection of books

16 The books of every Provident Insurance Society shall at all reasonable hours be open to inspection by the Registrar or by any person appointed by him in this behalf or by any member of the society

Notes—According to section 17(2) of the English Industrial and Provident Societies Act, 1893 (56 & 57 Vict c 39) any member or person having an interest in the funds of a registered society may inspect his own account and the books containing the names of the members at all reasonable hours The time and manner of inspection may be regulated by the general meetings of the society—*Vide Halsbury*, Vol. XVII p 16

Inquiry.

17. (1) The Registrar may ... upo ... pol ... hold or direct an enquiry to ... qualifications appointed by him ... solvency of any Provident Insurance Society or as to the manner in which the business of any such society is conducted

(2) An application to the Registrar under sub-section (1) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for applying for an enquiry.

(3) The Registrar may require the applicants under sub section (1) to give such security as he thinks fit for the costs of the proposed inquiry before such an inquiry is held.

(4) All expensss of, and incidental to, or preliminary to, any inquiry made on application as aforesaid shall be defrayed by the applicants therefor or out of the funds of the society or by the members or officers of the society in such proportions as the Registrar may direct by order in writing

(5) An order made under sub-section (4) shall on application be enfoced by any Civil Court having local jurisdiction in the same manner as a decree of such Court

(6) A person holding an inquiry under this section shall have access to all the books and documents of the sociey, and shall have power to call upon the society and the officers of the society to furnish such statements and other information in relation to its business as he may direct

(7) The result of the inquiry shall be communicated to the society and to the applicants (if any)

Notes —'We have re drawn clause 17 The inquiry provided by that clause will not be made by the Registrar either on his own motion or on the application of members or policy holders , the inquiry may be held by the Registrar himself or he ... ap ... th ... o ... R ... tl ...

Cancellation of registry

18 When an inquiry has been held under section 17, the Registrar may, if he is satisfied—

(a) that the society is insolvent, or must necessarily become so, or

(b) that the business of any such society is conducted fraudulently or not in accordance with the rules thereof

after giving previous notice in writing in such manner as he thinks fit specifying briefly the grounds of the proposed cancellation, cancel the registry of the society.

Notes —'We have inserted a new clause (18) providing that after inquiry has been held and the Registrar has given notice to the society specifying the grounds for his proposed action he may cancel the registry of the Society —*Report of the Select Committee*

Liquidators

19 (1) Where the registry of a Provident Insurance Society is cancelled in accordance with the provisions of section 18, the Registrar may appoint a liquidator to wind up the society

(2) A liquidator appointed under sub section (1) shall have power—

(a) to institute or defend any legal proceedings on behalf of the Society by his name of office ,

(b) to determine the contribution to be made by members of the society, respectively, to the assets of the society ,

any society is *prima facie* evidence of (1) the names addresses and occupations of the members and the number of shares held by each member, the numbers of such shares, if numbered and the amount paid or agreed to be considered paid on them, (2) the date of entry on the register in proof of membership, (3) the date of cessation of membership

Publication of authorized subscribed and paid up capital

11 Where any notice advertisement or other official publication of a Provident Insurance Society contains a statement of the amount of the authorized capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up

Notes—'We have added a new clause 11 reproducing clause 18 of the Life Assurance Companies Bill as we consider the provision a salutary one in the case of these societies also —*Report of the Select Committee*

Office

12 Every Provident Insurance Society which is not registered under the Indian Companies Act, 1882, shall have an office on the outside of which it shall display and keep displayed its name in a conspicuous position in legible letters, to which all communications and notices may be addressed, and shall give notice to the Registrar of the situation of such office and of any change therein

Notes—We think it desirable that the name of the Society should be publicly displayed at its office and we have amended clause 12 to provide for this —*Report of the Select Committee*

Revenue account and balance sheet

13 Every Provident Insurance Society shall, at the expiration of each financial year, prepare a revenue account and balance sheet in the prescribed form and verified in the prescribed manner, and shall cause them to be audited by an auditor possessing the prescribed qualifications

Notes—Under section 15 of the English Industrial and Provident Societies Act, 1892 (56 and 57 Vict c 39) every member or person interested in the funds of the society is entitled to receive gratuitously a copy of the annual return

Delivery and publication of the revenue account etc

14 Every Provident Insurance Society shall within six months of the expiration of each financial year, deliver to the Registrar the revenue account and balance sheet required by section 13, and shall publish them in the prescribed manner

Notes—This section corresponds to section 20 of the English Industrial and Provident Societies Act, 1893 (56 and 57 Vict c 39)

Record of insurances effected on life other than life of person insuring

15 Every Provident Insurance Society shall maintain in the prescribed form a record of every insurance effected on a life other than the life of the person insuring, and shall deliver a copy of such record to the Registrar together with the balance sheet and revenue account

Inspection of books

16 The books of every able or or by any member of the society

Notes—According to section 17(2) of the English Industrial and Provident Societies Act 1893 (56 & 57 Vict c 39) any member or person having an interest in the funds of a registered society may inspect his own account and the books containing the names of the members at *all reasonable hours* The time and manner of inspection may be regulated by the general meetings of the society —*Vide Halsbury*, Vol, XVII p 16

17 (1) The Registrar may, if he thinks fit, of his own motion, and shall,

Inquiry

hold or direct an enquiry [illegible] qualifications appointed by him by order in writing in this behalf as to the solvency of any Provident Insurance Society or as to the manner in which the business of any such society is conducted

under sub-section (1) shall be supported require for the purpose of showing that [illegible]plying for an enquiry

(3) The Registrar may require the applicants under sub section (1) to give such security as he thinks fit for the costs of the proposed inquiry before such an inquiry is held

(4) All expensss of, and incidental to, or preliminary to any inquiry made on application as aforesaid shall be defrayed by the applicants therefor or out of the funds of the society or by the members or officers of the society in such proportions as the Registrar may direct by order in writing

(5) An order made under sub-section (4) shall on application be enfoced by any Civil Court having local jurisdiction in the same manner as a decree of such Court

(6) A person holding an inquiry under this section shall have access to all the books and documents of the sociey, and shall have power to call upon the society and the officers of the society to furnish such statements and other information in relation to its business as he may direct

(7) The result of the inquiry shall be communicated to the society and to the applicants (if any)

Notes — We have re drawn clause 17 The inquiry provided by that clause will not be made by the Registrar either on his own motion or on the application of members or policy holders , the inquiry may be held by the Registrar himself or he may direct an inquir[illegible] against frivolous or m[illegible] the cost of an inquiry [illegible] of the inquiry to the s[illegible] *Report of the Select Co[illegible]* the Registrar as to the

Cancellation of registry

18 When an inquiry has been held under section 17 the Registrar may, if he is satisfied—

(a) that the society is insolvent or must necessarily become so or

(b) that the business of any such society is conducted fraudulently or not in accordance with the rules thereof

after giving previous notice in writing in such manner as he thinks fit speci fying briefly the grounds of the proposed cancellation cancel the registry of the society

Notes — We ha[illegible] been held and the for his proposed a[illegible] *Select Committee*

Liquidators

19 (1) Where the registry of a Provident Insurance Society is cancelled in accordance with the provisions of section 18 the Registrar may appoint a liquidator to wind up the society

(2) A liquidator appointed under sub section (1) shall have power—

(a) to institute or defend any legal proceedings on behalf of the Society by his name of office ,

(b) to determine the contribution to be made by member[illegible]ociety, respectively, to the assets of the society ,

(*c*) to investigate all claims against the society and to decide questions of priority arising between claimants ,

(*d*) to determine by what persons and in what proportions the costs of the liquidation are to be borne , and

(*e*) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society

(3) Subject to any rules of procedure made under this Act a liquidator appointed under this section shall, in so far as such powers are necessary to carry out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908

(4) Orders made under this section shall on application be enforced as follows —

(*a*) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court ,

(*b*) when made by the Court on appeal in the same manner as a decree of the Court

Appeals

Appeals

20. (1) An appeal shall lie to the Court within thirty days—

(*a*) from an order of the Registrar refusing to register a Provident Insurance Society or any rules or amendments of rules of such society ,

(*b*) from an order of the Registrar cancelling the registry of a society ,

(*c*) from an order made by a liquidator appointed under section 19

(2) Save as hereinbefore expressly provided, orders made under this Act shall be final and conclusive

Notes —' We have inserted a new clause (20) providing for appeals against the orders of the Registrar or cancelling registry and against the order of a liquidator The Appeal is to the Court and in this we have followed the Friendly Societies Act, 1906 and the Industrial and Provident Societies Act 1893 — *Report of the Select Committee*

Offences and Procedure

Penalty for non compliance with Act

21 Any Provident Insurance Society which makes default in complying with any of the requirements of this Act, and every director, manager or secretary or other officer or agent of the society, who is knowingly a party to the default, shall be punishable with fine which may extend to five hundred rupees, or, in the case of a continuing default, with fine which may extend to two hundred and fifty rupees for every day during which the default continues

Notes — 'The second Presidency the judgment of *Mr Justice Fletcher* question was not amenable to Act V had a share capital divided into shares N 1182

Penalty for falsifying documents

22 If any register, account balance sheet or other document required by this Act is false in any particular to the knowledge of any person who signs it such person shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both

Cognizance of offences

23 No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act

Rules

24 (1) The Local Government may make rules to carry out the purposes of this Act.

Rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) [illegible]
tion of [illegible]
to be [illegible]

[illegible] d by this Act, and
[illegible] be verified ;

(d) the fees to be charged for matters transacted under this Act, and the manner in which the same are to be collected ,

(e) the qualifications of auditors and actuaries under this Act ,

(f) the manner in which any document required to be published by this Act shall be published , and

(g) the procedure to be followed by liquidators under this Act

(3) The power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication

(4) All rules made under this Act shall be published in the local official Gazette, and on such publication shall have effect as if enacted therein

Notes —"Following our amendment of the Life Assurance Bill we have by clause 23 restricted the trial of offences against the Bill to certain Courts and we have extended the rule making power in clause 24 '—*Report of the Select Committee*

Miscellaneous

25 No policy effected before the commencement of this Act with a Provident Insurance Society shall be deemed to be void by reason only that the insurance is not authorized by this Act

Saving of existing policies

Notes —"We have added in clause 25 a provision saving policies effected before the commencement of this Bill and, by clause 26 we have granted a wide power to the Local Government to exempt societies from the provis ons of the Bill "—*Report of the Select Committee*

26 The Local Government may, by notification in the local official Gazettee, and subject to such conditions and restrictions as it thinks fit, exempt any Provident Insurance Society or class of Provident Insurance Societies from all or any of the provisions of this Act

Power of Local Government to exempt from provisions of the Act

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THE PROVINCIAL INSOLVENCY ACT, 1920

ACT NO V OF 1920.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL IN COUNCIL ON THE 25TH FEBRUARY, 1920

An Act to consolidate and amend the Law relating to Insolvency in British India, as administered by Courts having jurisdiction outside the Presidency towns and the Town of Rangoon

WHEREAS it is expedient to consolidate and amend the law relating to insolvency in British India, as administered by Courts having jurisdiction outside the Presidency towns and the "Towns of Rangoon and Karachi" ;* [illegible] enacted as follows :—

* Substituted by [illegible]

Notes—The insolvency law is mainly an administrative or adjective law of machinery to bring about certain results, namely, the satisfaction of the insolvent's debts The provisions contained in the Act are therefore of a general character A I R 1931 All 162=53A 239 (F B)

Short title and extent

1 (1) This Act may be called the Provincial Insolvency Act, 1920

(2) It extends to the whole of British India except the Scheduled Districts

Definitions

2 (1) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "creditor" includes a decree holder, "debt" includes a judgment-debt, and "debtor" includes a judgment debtor,

(*b*) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency towns, "the town of Rangoon and the limits of the ordinary original civil jurisdiction of the [Chief Court of Sind*] as defined in section 2 of the Presidency towns Insolvency Act, 1909"†

(*c*) "prescribed" means prescribed by rules made under this Act,

(*d*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit,

(*e*) "secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor, and

(*f*) "transfer of property" includes a transfer of any interest in property and the creation of any charge upon property

(2) Words and expressions used in this Act and defined in the Code of Civil Procedure, 1908,‡ and not hereinbefore defined shall have the same meanings as those respectively attributed to them by the said Code

Creditor—According to section 48 of the English Bankruptcy Act it means a person who is entitled to prove in bankruptcy *It includes a surety (1897) 1 Q B* 122, (1901) 1 Ch 77 As regards the meaning of the term under the Indian law *vide*, 42 M 684, 44 A 296, 43 A 51, 88 Ind Cas 924 A contingent creditor is not a creditor 32 Ind Cas 795

Debt—*Vide* 51 M L J 613=98 Ind Cas 516, 27 C 42, 5 C 536, 21 A 406 40 M 31, 73 Ind Cas 1037, 4 C W N 87

Debtor—*Vide* (1862) 2 Q B D 293, (1901) A C 102

Property—The word 'property" in s 2(d) is defined as including any property over which any person has a disposing power which he may exercise for his own benefit A I R 1933 Nag 125=A I R 1933 Nag 150=143 Ind Cas 69=29 N L R 159, 6 Lah 1 (P C) As regards whether partnership assets are property, *vide* 10 C 663, 3 C 198 P C, 13 M 447, 18 L W 868=45 M L J 829, 1925 Sind 72, 14 M I A 40, 14 C 38, 6 M I A 510

The joint family property is property under this clause 54 Ind Cas 931, 1925 A I R Mad 259, 85 Ind Cas 396, 1923 A I R Sind 20, 74 Ind Cas 301, 48 Ind Cas 526, A I R 1925 Pat 127=85 Ind Cas 88; A I R 1934 Oudh 1=10 O W N 1233 (F B) A I R 1933 A 841=1933 A L J 943, *contra* 2 Pat 724 A claim for damages for breach of contract is also property 80 Ind Cas 141 As regards right of action in respect of a tort, *vide* 98 Ind Cas 516; 76 Ind Cas 657 It does not include trust property 29 Ind Cas 37

PART I.

CONSTITUTION AND POWERS OF COURT.

Insolvency jurisdiction

3 (1) The District Courts shall be the Courts having jurisdiction under this Act

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* The words are to be deemed to have been substituted for the words 'Court of the Judicial Commissioner of Sind' by Act 34 of 1926 when it is brought into force

† Substituted by Act IX of 1926. ‡ Act V of 1908

Provided that the Local Government may, by notification in the local official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases and any Court so invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act

(2) For the purposes of this Act, a Court of Small Causes shall be deemed to be subordinate to the District Court

Notes—In the absence of notice the District Judge can not transfer a case 75 Ind Cas 876=45 M L J 689 As regards the power of Additional District Judge *Vide* 34 A 382, 36A 8 When legally invested with powers the subordinate Court can exercise jurisdiction 6 A L J 483=2 Ind Cas 223

Power of Court to decide all questions arising in insolvency

4 (1) Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title or priority, or of any nature whatsoever and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes as between on the one hand, the debtor and the debtor s estate, and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them

(3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in sub section (1) but has reason to believe that the debtor nas a saleable interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditons as it may think fit

Notes—All questions necessary to decide for the purpose of doing complete justice [illegible]
The [illegible]
A I I [illegible]
the A [illegible]
to take proceedings *suo motu* A I R 1933 Lah 789

Sub section (2)—45 M 434, A I R 1933 Nag 373

Sub section (3)—26 C W N 921=72 Ind Cas 320, 52 C 66[illegible]

General powers of Courts

5 (1) Subject to the provisions of this Act the Court, in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction

(2) Subject as aforesaid, High Courts and District Courts in regard to proceedings under this Act in Courts subordinate to them shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits

Notes—An Official Reciever has no power to review the order of his predecessor 105 Ind Cas 366 Under this section the Court has the same powers and follows the same procedure as in the [illegible] hence it has power to review its own order [illegible] Nag 151, A I R 1933 A 117=1932 A L [illegible] two joint debtors committing joint act [illegible] this section the District Judge has inherent power to grant *interim* protection to a person who has applied for being adjudicated an insolvent 1925 Mad 170=47 M L J 783

Notes—The insolvency law is mainly an administrative or adjective law of machinery to bring about certain results, namely, the satisfaction of the insolvents debts The provisions contained in the Act are therefore of a general character A I R 1931 All 162=53A 239 (F B)

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tion in any area [illegible]
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(c) "prescribed" means prescribed by rules made under this Act,

(d) 'property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit,

(e) "secured creditor ' means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor, and

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Property—The word 'pr[illegible]
over which any person has a [illegible]
benefit A I R 1933 Nag [illegible]
N L R 159, 6 Lah 1 (P C) [illegible]
vide 10 C 663 3 C 198 P [illegible]
Sind 72, 14 M I A 40, 14 C [illegible]
The joint family property [illegible]
A I R Mad 259, 85 Ind [illegible]
48 Ind Cas 576, A I R 1 [illegible]
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PART I.

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Provided that the Local Government may, by notification in the local official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act

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(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes as between, on the one hand, the debtor and the debtor s estate, and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them

(3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in sub section (1) but has reason to believe that the debtor nas a saleable interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditons as it may think fit

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(2) Subject as aforesaid, High Courts and District Courts in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits

Notes—An Official Reciever has no power to review the order of his predecessor 105 Ind Cas 366 Under this section the Court has the same powers and follows the same procedure as in the exercise of its civil jurisdiction and hence it has power to review its own order 46 M 405=44 M L J 251, A I R 1934 Nag [illegible] two [illegible] ler this [illegible] person [illegible] M L J [illegible]

PART II.

Proceedings from Act of Insolvency to Discharge

Acts of insolvency

Acts of insolvency

6 A debtor commits an act of insolvency in each of the following cases, namely —

(*a*) if, in British India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally,

(*b*) if, in British India or elswhere, he makes a transfer of his property, or of any part thereof with intent to defeat or delay his creditors,

(*c*) if, in British India or elsewhere, he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent,

(*d*) if, with intent to defeat or delay his creditors,—

(*i*) he departs or remains out of British India,

(*ii*) he departs from his dwelling house or usual place of business or otherwise absents himself,

(*iii*) he secludes himself so as to deprive his creditors of the means of communicating with him,

(*e*) if any of his property has been sold in execution of the decree of any Court for the payment of money,

(*f*) if he petitions to be adjudged an insolvent under the provisions of this Act,

(*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend payment of his debts, or

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money

Explanation —For the purposes of this section the act of an agent may be the act of the principal

Clause (a) —26 B 765, 2 C W N 335, 97 Ind Cas 257=(1927) A I R Sind 78

Clause (b) —19 C 244 (P C), A I R 1933 Rang 216=A L R 1933 Nag 269

Clause (c) —In such an assignment a fraudulent intention on the part of the debtor must be present (1890) 21 Q B D 728, see also 20 M 326; 19 C W N 157, 11 A L J 545, 36 M L J 180=50 Ind Cas 593, 2 C W N 335, 97 Ind Cas 257

Clause (d) —Concealment by assuming another name will amount to an act of bankruptcy, (1895) 1 Q B 193, mere absence for two or three hours is not sufficient 88 Ind Cas 440=23 A L J 536 The intention of a debtor in such a case is material 56 Ind Cas 158 Concealment of property to defeat creditor is not an act of *insolvency* A L R 1933 Lah 557=A I R 1933 Lah 725=34 P L R. 987

Clause (e) —Under this clause three things are necessary first, there must have [illegible] sale must be in execution of a decree, and [illegible] money A decree ordering the sale of the [illegible] payment of money is a decree for payment of money [illegible] mages for libel is a decree for money 11 Cr L J 453, for other cases under this clause *vide* 29 M 318, 1926 M W N 977

Clause (f) —The filing of a petition is complete when it is delivered by a properly authorised person to the proper officer *Ransford* v *Maule*, (1873) L R 8 C P 672; see also 15 C W N 990, 15 C W N 213=12 C L J 400, 25 M L J 445=21 Ind Cas 293

Clause (g) —The word suspension of payment should be strictly construed A L R. 1933 Lah 803=A I R 1933 Lah 319=144 Ind Cas 276=34 P L R 682 Suspension of debt must be accompanied by notice A I R 1933 Lah 725=34 P L R 987 Closing business and asking creditors to communicate with pleaders of the

firm is an act of insolvency A I R 1977 Sind 49 A 321=A I R 1927 All 266 The notice Samuel, (1905) A C 446 It may be verbal A notice of suspension of payment is sufficient also 95 Ind Cas 453 97 Ind Cas 446, 25 A

the creditor (3) The third is that in construing the statement of the debtor it has to be seen whether he has clearly indicated that not only he is not going to pay a particular creditor but that he intends to deal with his creditors Although no written notice of such suspension is necessary yet it must be in a sense formal and must not merely be the result of a casual conversation A I R 1934 Pat 43=14 P L T 691, see also A I R 1933 Lah 559=A I R 1934 Lah 113

Joint adjudication—In order to sustain a joint adjudication against two or more persons it is necessary that some act of insolvency shall have been committed by each of them 100 Ind Cas 389

Petition

Petition and adjudication

7 Subject to the conditions specified in this Act, if a debtor commits an act of an insolvency an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent

Explanation — The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication

Notes—A son of a Hindu can not be adjudicated insolvent for the debt of his father 50 M 981=53 M L J 403=104 Ind Cas 642 A petition may be presented on the same day as that on which the act of insolvency is committed *Exparte Kibble*, 7 Morsell, 50 A joint application aga [illegible] family who are jointly liable for insolvency is C W N 461 Where the requirements of the

restoration of peti declared an insol ourt to be moved on l Cas 246=A I R 1925 Nag 225

Exemption of corporation etc, from insolvency proceedings

8 No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force

Notes—A Hindu joint family as well as partners of a partnership firm can be declared an insolvent 84 Ind Cas 468, 72 Ind Cas 60 The minor member of a firm can not be declared an insolvent *Lovell* v *Beauchauh*, (1894) A C 607, 42 A 516, 42 C 225, 19 Ind Cas 704, 20 C W N 1065

Conditions on which creditor may petition

9 (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(a) [illegible] the debtor to the creditor, or, if two or more of debts owing to such cre-

ier immediately or at some certain future time, and

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

Notes.—Under this section, it is not necessary that the petitioning creditor should be a creditor on the date of the adjudication; it is sufficient if he is so on the date of the petition 50 M 396=99 Ind Cas 536. In cases where there are between two merchants contracts of sale and of purchase the practice is to set off the first ... ase or *vice versa* ... n ascertained sum ... 186=56 Ind Cas 158. A creditor who has assented to a deed of ... benefit of all his creditors can not file a ... insolvent treating the deed as an act of bankru... 839=47 M L J 494. On an application by ... insolvent it is the duty of the Court to enquire ... ing creditor Rs 500 or more, and also genera... in s 24. 96 Ind Cas 425=A I R 1926 Lah 638.

Cases.—26 Bom. L R 432=80 Ind Cas 482, 72 Ind Cas 488=44 M L J 303; 72 Ind Cas 433=A I R 1924 Lah 374.

Conditions on which debtor may petition

10. (1) A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts and—

(a) his debts amount to five hundred rupees; or

(b) he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or

(c) an order of attachment in execution of such a decree has been made, and is subsisting against his property.

(2) A debtor in respect of whom an order of adjudication (whether made under the Presidency towns Insolvency Act, 1909 or under this Act)* has been annulled, owing to his failure to a... his discharge, shall not be entitled to ... leave of the Court by which the orde... Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.

... the market value ... A. L R 1933 A ... itor can seek the ... hat he is unable to ... with others amount to more ... see also 105 Ind Cas 569 ... unable to pay his debts, ... Cas 7. The arrest must be ... be said that the failure to ... from being declared an insolvent 98 Ind Cas 900. The debtor's right to present ... the existence of one of the three ... n 6 N. L R 145. Where the ... ourt is not entitled to dismiss the ... decree of a Rent Court is a debt ... is 758. Where a debtor applies to

* Substituted by Act 11 of 1927.

be adjudicated an insolvent on the ground that he is unable to pay his debt, he need furnish only such proof as is sufficient to satisfy the Court that there are *prima facie* grounds for believing his allegation 45 M L J 129 Under this section the debtor has to fulfil certain conditions to get himself adjudged an insolvent and if those conditions are fulfilled the Court
applying an insolvent 69 Ind Cas 622
ground for order 80 Ind Cas 325 If
insolvent his on his own showing marketable property of an indefinitely greater value than his outstanding debts, a Court can discuss petition 89 Ind Cas 585=A I R 1925 Lah 630 Where a debtor is unable to pay his debts and the assets are less than the liabilities an order of adjudication should be made 1924 Lah 724

Sub section (2)—To grant leave to appeal on an order passed by the District *Judge is in the discretion of the Court 104 Ind Cas 613 This sub section implies* that apart from annulment a second petition lies 39 M L T 118=(1927) M W N 176=101 Ind Cas 346=A I R 1927 Mad 679

Court to which petition shall be presented

11 Every insolvency petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business, or personally works for gain, or if he has been arrested or imprisoned, where he is in custody

Provided that no objection as to the place of presentment shall be allowed by any Court in the exercise of appellate or revisional jurisdiction unless such objection was taken in the Court by which the petition was heard at the earliest possible opportunity, and unless there has been a consequent failure of justice

Notes—Under this section it is not necessary for the petitioner to reside for a long time at a place within the jurisdiction of the Court 15 C L J 457=14 Ind Cas 980 A Court is competent to entertain the insolvency petition of a person working as a domestic servant within its jurisdiction, although he has got an
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Verification of petition

12 Every insolvency petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908,* for signing and verifying plaints

Notes—An application by a firm must be made in the name of the firm 72 Ind Cas 60

Contents of petition

13 (1) Every insolvency petition presented by a debtor shall contain the following particulars namely —

(*a*) a statement that the debtor is unable to pay his debts,

(*b*) the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned the place where he is in custody,

(*c*) The Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property together with particulars of the decree in respect of which any such order has been made,

(*d*) the amount and particulars of all pecuniary claims against him together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him,

* Act V of 1908

(e) the amount and particulars of all his property, together with—

(i) a specification of the value of all such property not consisting of money

(ii) the place or places at which any such property is to be found, and

(iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1908,* or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree,

(f) a statement whether the debtor has on any previous occasion filed a petition to be adjudged an insolvent, and (where such a petition has been filed —

(i) if such petition has been dismissed the reasons for such dismissal, or

(ii) if the debtor has been adjudged an insolvent, concise particulars of the insolvency, including a statement whether any previous adjudication has been annulled and, if so, the grounds therefor

(2) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (b) of sub section (1) and shall also specify—

(a) the act of insolvency committed by such debtor, together with the date of its commission, and

(b) the amount and particulars of his or their pecuniary claim or claims against such debtor

Clause (a) —Before an order of adjudication the Court need not enquire into the reality of debts 36 M 402, 14 M L T 587, 21 Ind Cas 293

Clause (c) —*Vide* 25 A 204

Clause (d) —*Vide* 35 P R 188

Clause (f) —*Vide* 40 Ind Cas 445, 49 Ind Cas 259, 22 C W N 171 (Notes)

Withdrawal of petitions

14 No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court

Notes —A petition of adjudicating a person insolvent cannot be withdrawn without the permission of the Court 20 L W 880, see also 85 Ind Cas 303 Before allowing withdrawal the Court should order the petitioner to have notice served on the opposite party 17 C W N 893, 35 Ind Cas 539

Consolidation of petitions

15 Where two or more insolvency petitions are presented against the same debtor, or where separate petitions are presented against joint debtors the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit

Notes —Where a Burmese Buddhist husband and wife were alleged to be jointly indebted to the petitioning creditor a single petition for adjudicating them as insolvent is maintainable 2 Rang 309=1925 Rang 36

Power to change carriage of proceedings

16 Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor

Notes —The mere fact that seven years had passed since the date of adjudication is not a sufficient reason for refusing to appoint a receiver 39 C L J 432=1924 Cal 849 The mere presentation of an insolvency application does not prevent the execution of the decree This is all the more the case where no order for adjudication is made after the presentation of the insolvency petition 82 Ind Cas 1=1924 All 707

Cases —98 Ind Cas 446=A I R 1927 Mad 201

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* Act of 1908

Continuance of proceedings on death of debtor

17 If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders be continued so far as may be necessary for the realisation and distribution of the property of the debtor

Notes —On the dea[illegible] hose property was vested in the receiver [illegible] The insolvent s heirs have no remedy [illegible] would have had against the insolvent [illegible] eferred against the adjudication of an insolvent abates on his death as such an order is purely personal to the insolvent The right to sue does not survive within the meaning of O 22, r 4 on the death of an insolvent respondent A I R 1928 Lah 119 An insolvency proceeding does not abate by the death of the debtor 59 Ind Cas 51, 3 Ind Cas 16 7 B 438, 10 B H C R 58 But the representatives of the debtor have a right to cross examine the creditors and their witnesses 57 Ind Cas 10

Procedure for admission of petition

18 The procedure laid down in the Code of Civil Procedure, 1908,* with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of insolvency petitions

Notes —*Vide* Orders VI & VII of the Civil Procedure Code, 1908

Procedure on admission of petition

19 (1) Where an insolvency petition is admitted the Court shall make an order fixing a date for hearing the petition

(2) Notice of the order under sub section (1) shall be given to creditors in such manner as may be prescribed

(3) Where the debtor is not the petitioner, notice of the order under sub section (1) shall be served on him in the manner provided for the service of summons

Notes —Section 19 (2) is not confined to the case of a petition by the debtor 93 Ind Cas 903=A I R 1926 Lah 360 but see 26 Ind Cas 282=12 L W 1012=1917 M W N 899 The service of notice is imperative 11 M 136, 12 C W N 273=4 C L J 268, but see 34 C L J 349 It may be sent by a letter 20 C L J 117=23 C W N 77 see also 23 C W N 319 Section 19 clauses 1 2 and 3 are all applicable to creditors' petition A L R 1934 Nag 67

Appointment of interim receiver

20 The Court when making an order admitting the petition may, and where the debtor is the petitioner ordinarily shall appoint an interim receiver of the property of the debtor or of any part thereof and may direct him to take immediate possession thereof or of any part thereof and the interim receiver shall thereupon have such of the powers conferrable on a receiver appointed under the Code of Civil Procedure, 1908,* as the Court may direct If an interim receiver is not so appointed, the Court may make such appointment at any subsequent time before adjudication and the provisions of this sub section shall apply accordingly

Notes —The effect of appointment of an interim receiver is that he will have such of the powers conferrable on a receiver appointed under C P C as the Court may order 53 M L J 142=A I R 1927 Mad 693 The insolvency of a land holder does not render him incompetent to issue a notice of ejectment to tenants [illegible] should be appointed for protecting proper[illegible] Cas 897 An interim receiver [illegible] of the petition. 42 C 789. Such [illegible]

* Act V of 1908

21 At the time of making an order admitting the petition or at any subsequent time before adjudication the Court may either of its own motion or on the application of any creditor make one or more of the following orders, namely —

Interim proceedings against debtor

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison ,

(2) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure, 1908,* or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree ,

(3) order a warrant to issue with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary

Provided that an order under clause (2) or clause (3) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(i) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or

(ii) has failed to disclose or has concealed destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid

Notes —Under section 21 the Court may make an order for security at any time at or after admitting the petition 93 Ind Cas 903=A I R 1926 Lah 360 The Court is to decide the amount of security 15 W R 571 The responsibility of the surety terminates with the death of the insolvent 17 C W N 1241=40 C 50 Where the surety fails to produce the insolvent, the security money should be paid to the decree holder 16 C W N 664=39 C 1048 The order of attachment under sub section (2) must be made in accordance with the provision of the Civil Procedure Code, 1908 36 A 65 The Provident Fund money is not liable to attachment 56 Ind Cas 450 , 21 A L J 454 , 50 C 347 , 24 C W N 288

22 The debtor shall on the making of an order admitting the petition produce all books of account, and shall at any time thereafter give such inventories of his property, and such lists of his creditors and debtors and of the debts due to and from them, respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally do all such acts and things in relation to his property as may be required by the Court or receiver, or as may be prescribed

Duties of debtor

Notes —*After admitting petition the Court may demand inventory of the debtor's* property and lists of debts due to and from his creditors and debtors 93 Ind Cas 903=A I R 1926 Lah 360 The Court can ask an insolvent to attend in person 33 B 472

23 (1) At the time of making an order admitting the petition or at any subsequent time before adjudication, the Court may, if the debtor is under arrest or imprisonment in execution of the decree of any Court for the payment of money, order his release on such terms as to security as may be reasonable and necessary

Release of debtor

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* Act V of 1908

(2) The Court may at any time order any person who has been released under this section to be re arrested and re committed to the custody from which he was released

(3) At the time of making any order under this section, the Court shall record in writing its reasons therefor.

Notes —An insolvency Court has no power to pass an order of interim protection in favour of a person arrested by a person empowered to arrest under s 10 of the Sind Encumbered Estates Act A I R 1927 Sind 123=28 Cr L J 194 (2) Under this section it is discretionary with a Judge on admitting a petition for insolvency to release the petitioner from arrest in execution of a money decree. Where the Court refuses to release the petitioner on giving security it must record its reasons 3 Pat 543=1924 P 559 Under this Act an insolvent is not entitled to apply for protection before adjudication unless he has been actually arrested in execution of a decree 1924 M W N 836=80 Ind Cas 938=47 M L J 530, 131 Ind Cas 208 This section only authorises a Court to release a debtor who is already under arrest 30 C W N 834 Under this section the Court is not bound to give protection order, but reasons for refusal should be stated 83 Ind Cas 877

24. (1) On the day fixed for the hearing of the petition, or on any sub sequent day to which the hearing may be adjourned, the Court shall require proof of the following matters, namely .—

Procedure at hearing

(*a*) that the creditor or the debtor, as the case may be, is entitled to present the petition

Provided that, where the debtor is the petitioner, he shall for the purpose be required to furnish only such proof e *prima facie* grounds for believing the satisfied, shall not be bound to hear any further evidence thereon ,

(*b*) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order admitting the petition , and

(*c*) that the debtor has committed the act of insolvency alleged against him

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing and the creditors shall have the right to question the debtor thereon

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the Judge, and shall form *part of the record of the case*

Notes —Where a debtor has filed a list of his assets, he cannot be required to

into the [illegible]
section [illegible]
Cas 60 [illegible]
an insol [illegible]
require him to [illegible]
Court need not [illegible]
1927 Cal 69 , [illegible]
1034 , 101 Ind Ca [illegible]
adjudicated insol- [illegible]
when he says his liabilities are m[illegible]
evidence that he is unable to mee[illegible]
should not be held for considering [illegible]
or not An enquiry into his *bona* [illegible]

discharge and not before What the Court has to do is to see whether *prima facie* he is unable to pay his debts 24 L W 219=92 Ind Cas 541=A I R 1926 Mad 494 On the day fixed for the hearing of an insolvency petition whether witnesses are present or not it is the duty of the Court to examine the debtor who had applied to be declared an insolvent, and then the Court can consider if sufficient cause had been shown to grant time for procuring further evidence 93 Ind Cas 953 (1) A I R 1926 Lah 508 A I R 1926 Cal 234 97 Ind Cas 792=A I R 1927 Cal 32 *Before adjudicating an applicant to be an insolvent the* Court is required to be satisfied that he is not in a position in fact to pay his debt A L R 1934 Pat 19=12 P 866 see also 37 C W N 841 A I R 1933 Lah
udged an insolvent only
500 or over and whe
34 P L R 69=A I R
1933 Lah 330=142 Ind Cas 690

Clause (2)—A L R 1933 Nag 247

25 (1) In the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition or of the service on the debtor of notice of the order admitting the petition, or of the alleged act of insolvency or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition

Dismissal of petition

(2) In the case of a petition presented by a debtor the Court shall dismiss the petition if it is not satisfied of his right to present the petition

the petition The Court must then be satisfied of the service on the debtor of the order admitting
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finds that there
must consider

26 (1) Where a petition presented by a creditor is dismissed under sub-section (1) of section 25, and the Court is satisfied that the petition was frivolous or vexatious the Court may, on the app
such amount, not exceeding
pensation to the debtor for
petition and the proceedings thereon and such amount may be realised as if it were a fine

Award of compensation

(2) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon

Notes—The Court can not award compensation to a debtor of its own motion
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us *vide*

Order of Adjudication

27 If the Court does not dismiss the petition it shall make an order of adjudication and shall specify in such order the period within which the debtor shall apply for his discharge

Order of adjudication

(2) The Court may, if sufficient cause is shown extend the period within which the debtor shall apply for his discharge, and in that case shall publish notice of the order in such manner as it thinks fit

Notes—The application for extension of time may be made as well by the petitioning creditor as by the debtor himself 100 Ind Cas 921=A I R 1927 Rang 136 The Insolvency Court has got power [illegible] insolvent should apply for discharge 100 I [illegible] under the old Act the petitioner did not acq[illegible] order of discharge and that the Court had [illegible] discharge must be applied for within one year [illegible] M L. J 595 There is no appeal against an order under sub section (2) refusing to extend the time for applying for discharge 89 Ind Cas 959 An extension of [illegible] 86 Ind Cas 115 Where an insolvency peti[illegible] adjudication he has the power to fix [illegible] order of adjudication 19 L W 416=34 M L J (H C) 170 Under sub section (2) the Court has power to extend the time for discharge even after the expiry of the period of the order for discharge 51 C 337=81 Ind Cas 584=1924 Cal 777 In an application to be adjudicated insolvent the Court has only to see whether the applicant has made out a *prima facie* case, and if there is any fraudulent concealment of assets the matter can be gone into subsequently in the Insolvency Court 27 P L R 734 As regards period of discharge a creditor can apply for extension, the Court can not extend *suo motu* A I R 1928 Lah 82

Effect of an order of adjudication

28 (1) On the making of an order of adjudication, the insolvent shall aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors

(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors and thereafter except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose

(3) For the purposes of sub section (2), all goods being at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent

(4) All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of sub-section (2) shall apply in respect thereof

(5) The property of the insolvent for the purposes of this section shall not include any property (not being books of account) which is exempted by the Code of Civil Procedure, 1908,* or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree

(6) Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security, in the same manner as he would have been entitled to realise or deal with it if this section had not been passed

(7) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made

Notes—An insolvent has right to maintain a suit for the recovery of "after acquired" property, subject to the right of the receiver to intervene at any stage The defendant cannot be heard to say such an action is not maintainable by the insolvent 45 M L J 827=18 L W 868 Where the adult members of a joint

* Act V of 1908

family have been declared insolvents the creditor must prove the whole debt in the Insolvency Court He cannot split up the debt and sue the minor members in respect of a portion thereof 19 N L R 128=72 Ind Cas 377 In English law the general rule is that the right of action except for personal injuries and the like pass to the trustee in bankruptcy, but even where the right has passed to the trustee, a bankrupt can sue subject to the right of the trustee to claim the proceeds In India the case falls under s 28 of the Act as regards which there is conflict of opinion in the several High Courts 1923 Pat. 287 If the goods have been mortgaged the [illegible] the mortgagor to continue [illegible] pass to the trustee 72 Ind [illegible] certain movable property [illegible] gal charge If the receiver realise the property, the debt constitutes a charge on the amount realised 21 A L. J 32=1923 A 153 In this section the effect of an order of adjudication is described and protection from arrests in execution of a decree is not provided 49 A 201=100 Ind Cas 320 The power of a Hindu father over the family property including sons interest therein must be deemed to be property within this section and such to vest in the receiver 102 Ind Cas 266=A I R 1927 Mad 701; A L R. 1934 Lah 14 Property devolving on insolvent after adjudication can be transferred [illegible] partner of that firm becomes an insolvent 100 Ind Cas 112 The fiction that once an order of adjudication is made it relates back to the presentation of the petition has no place outside Insolvency Act 102 Ind Cas 444 This section is to be read subject to s 53 A I R 1925 Sind 18

29 Any Court in which a suit or other proceeding is pending against a debtor shall, on proof that an order of adjudication has been made against him under this Act, either stay the proceeding, or allow it to continue on such terms as such Court may impose

Stay of pending proceeding

Notes—This section contemplates not only a suit filed before an order of adjudication but also one filed after the other but in real ignorance of it In such a case the procedure is not to obtain permission under s 28 from the insolvency Court but the Civil Court can under s 29 either stay the suit or continue it under such terms as it thinks fit 1924 Nag 300 A Court is bound to order stay of proceedings against a debtor only after the debtor is adjudicated for under section 28 vesting only takes place before adjudication 93 Ind Cas 877=23 L W 300=1926 Mad 432=40 M L J 665

30 Notice of an order of adjudication stating the name, address and description of the insolvent, the date of the adjudication the period within which the debtor shall apply for his discharge, and the Court by which the adjudication is made shall be published in the local official Gazette and in such other manner as may be prescribed

Publication of order of adjudication.

Notes—Want of notice is a mere irregularity 5 C W N 91

Proceedings consequent on Order of Adjudication

31 (1) Any insolvent in respect of whom an order of adjudication has been made may apply to the Court for protection, and the Court may on such application make an order for the protection of the insolvent from arrest or detention

Protection order

(2) A protection order may apply either to all the debts of the debtor, or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit

(3) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order applies, and any insolvent arrested or detained contrary to the terms of such an order shall be entitled to his release :

Provided that no such order shall operate to prejudice the rights of any creditor in the event of such order being revoked or the adjudication annulled

(4) Any creditor shall be entitled to appear and oppose the grant of a protection order

Notes—There is no provision in the Act to pass orders to prevent the arrest of a petitioner pending the hearing of petition for insolvency 30 C. W N 834=96 Ind Cas 131=A I R 1926 Cal 1011. The power is discretionary with the Court *Vide* 35 B 47 , 40 B 461.

Power to arrest after adjudication

32 At any time after an order of adjudication has been made, the Court may, if it has reason to believe on the application of any creditor or the receiver, that the debtor has absconded or departed from the local limits of its jurisdiction with intent to avoid any obligation which has been, or

...der a warrant to issue for his ...it, may, if satisfied that he ... order his release on such ...ssary, or, if such security is ...e civil prison for a period which may extend to three months

Notes—We have also provided a new section to arrest a debtor who has absconded after an order of adjudication has been made against him —*Report of the Select Committee*

Schedule of creditors

33 (1) When an order of adjudication has been made under this Act, all persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts •

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule

(2) A copy of every such schedule shall be posted in the Court house

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the "receiver"* and the other creditors who have proved their debts, and hearing their objections (if any), shall comply with or reject the application.

Notes ... cannot add a name or remove a name from the ...udicially in the presence of the party after ...f the claim 90 Ind Cas 802 Although a ... Mitakshara has admitted a certain debt to ... decree as *benami* on their own behalf as ... the duty of the Insolvency Court under this ...he debt is, as a matter of fact, a good debt ...

* Substituted by Act 39 of 1926.

whether those debts have been entered in the schedule contemplated by this section or not 95 Ind Cas 204=A I R 1926 Lah 489=8 L L J 286 Under sub section (3) a person who has already proved one or more debts and has been entered in the schedule can, if he wishes, prove a further debt subsequently 44 C L J 108=97 Ind Cas 1013

Debts provable under the Act

34 (1) Debts which have been excluded from the schedule on the ground that their value is incapable of being fairly estimated and demands in the nature of unliquidated damages arising otherwise than by reason of a contract or a breach of trust shall not be provable under this Act

(2) Save as provided by sub-section (1), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act

Notes —A debt to be provable under this section must be a debt to which the ... before the date of ... held to be provable ... plication for entering ... that of the debt being ... not provable *In re* ... 07 Damages given ... *orman Ex parte Bale* ... *vide*—1925 A I R ... R App 2; 20 W R ... Cas 158, 15 Ind ... ation 61 Ind Cas 640; 48 Ind Cas 913

Annulment of Adjudication

Power to annul adjudication of insolvency

35 Where in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, the Court shall, ... or of any other person interested, by order in "and the Court may, of its own motion or on ... or any creditor, annul any adjudication made ... was, by reason of the provisions of sub-section (2) of section 10 not entitled to present such petition"*

Notes —A Court has no jurisdiction to pass an order of annulment of adjudica- ... 90 Ind Cas 277=3 ... ication it ... in other ... illy exist ... l release ... A 272= ... under s ... right of appeal conferred on him by s 75 A L R 1934 Rang 67 The occasions for exercising the power of annulling an adjudication under the Provincial Insolvency Act on the ground that it ought not to have been made appear to be even more restricted than under the Presidency Towns Insolvency Act A I R (1928) Mad 394

Power to cancel one of concurrent orders of adjudication

36 If, in any case in which an order of adjudication has been made, it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor, and that the property of the debtor can be more conveniently distributed by

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* Added by Act XI of 1927.

such other Court, the Court may annul the adjudication or stay all proceedings thereon

Notes —Where concurrent proceedings for similar relief are taken in two different and independent Courts no order should be passed which may lead to friction and conflict of jurisdiction 78 Ind Cas 620=3 Pat 357, see also 21 B 297, 31 C 762

37 (1) Where an adjudication is annulled all sales and dispositions of property and payments duly made and all acts theretofore done, by the Court or receiver, shall be valid, but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare

Proceedings on annulment

(2) Notice of every order annulling an adjudication shall be published in the local official Gazette and in such other manner as may be prescribed

Notes —When an order of adjudication has been annulled the property of the person who was sought to be adjudicated cannot be distributed by the Official Receiver among the creditors 1926 M W N 950 A Court has no option but to annul an adjudication where an insolvent fails to apply for an order of discharge within the time specified by Court, but with a view to protect the creditors, the Court should pass an order under s 37, vesting the property of the debtor in a person appointed by it 100 Ind Cas 137 Where no appointment was made by the Court and no conditions were imposed it would seem that the property would revert to the insolvent 86 Ind Cas 324 Where the insolvent fails to apply for an order of discharge the Insolvency Court has no option but to annul his adjudication But in order to protect creditors under the section the proper order of the Court should be that the property of the debtor shall vest in a person appointed by the Court 94 Ind Cas 234=A I R 1926 Lah 370 The consequences of annulment of adjudication are [illegible] 933 Lah 187=34 [illegible] of the insolvent [illegible] rty is vested at [illegible] Rang 222=145 Ind Cas 320 (F B)

Compositions and schemes of arrangement.

38 (1) Where a debtor, after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal and shall issue a notice to all creditors in such manner as may be prescribed

Compositions and schemes of arrangement

(2) If on the consideration of the proposal a majority in number and three fourths in value of all the creditors whose debts are proved and who are present in person or by pleader, resolve to accept the proposal the same shall be deemed to be duly accepted by the creditors

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is in the opinion of the Court calculated to benefit the general body of creditors

(4) Where the Court is of opinion, after hearing the report of the receiver, if a receiver has been appointed and after considering any objections which may be made by or on behalf of any creditor that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal

(5) If any facts are proved on proof of which the Court would be required either to refuse suspend or attach conditions to the debtor s discharge the [illegible] provides reasonable security [illegible] all the unsecured debts

(6) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent

(7) In any other case the Court may either approve or refuse to approve the proposal

proposal for composition is not ... the proposal and orders it it does n... prevent a creditor from attaching ... provisions of this section are to be st... assignment by a debtor of his entire ... him of any interest which can be the subject of attachment, subsequently issued in execution of a decree against such debtor until the trusts of the deed of assignment have been carried out 97 Ind Cas 257 see also A I R 1924 Lah 709

Cases—24 A L J 44=97 Ind Cas 556 (2)

39 If the Court approves the proposal the terms shall be embodied in an order of the Court * the order of adjudication shall be annulled, and the provisions of section 37 shall apply and the composition or scheme shall be binding on all the creditors "so far as relates to any debt due to them from the debtor and provable under this Act" †

Order on approval

... the Court ... A decree ... schedule is ... Cas 207= A I R 1926 Lah 489, see also (1925) A I R Lah 376=26 P L R 117

40 If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme can not proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, re adjudge the debtor insolvent and annul the composition or scheme but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme When a debtor is re adjudged insolvent under this section all debts provable in other respects which have been contracted before the date of such re adjudication shall be provable in the insolvency

Power to re adjudge debtor insolvent

Notes—No fresh petition to have the debtor adjudged insolvent is necessary *Exparte Godfrey*, 18 Q B D 670, *Hardy v Farmer*, (1896), 4 Ch 904

Discharge

41 (1) A debtor may, at any time after the order of adjudication and shall within the period specified by the Court apply to the Court for an order of discharge, and the Court shall fix a day, notice whereof shall be given in such manner as may be prescribed, for hearing such application, and any objections which may be made thereto

Discharge

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and where a receiver has been appointed the report of the receiver—

(a) grant or refuse an absolute order of discharge, or

(b) suspend the operation of the order for a specified time, or

* Certain words after this repealed by Act 10 of 1935 have been omitted

† Substituted by Act I of 1935

(c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after acquired property

Notes [illegible] of adjudication within which the [illegible] cannot pass an order annulling the [illegible] his discharge within two years [illegible] Where an insolvent's assets were not of a value equal to 8 annas in the rupee and he obstructed the Receiver in paying debts, the order refusing to discharge him is proper 80 Ind Cas 54=1925 Oudh 112 A [illegible]

[illegible] Ind Cas 247

Sub-Section (2) (a)—*Vide* 19 C 730, 45 M L J 166, A L R. 1934 Lah 130, A I. R 1933 Lah 812.

Sub section (2) (b).—*Vide* 91 Ind Cas 760

Cases in which Court must refuse an absolute discharge

42 (1) The Court shall refuse to grant an absolute order of discharge under section 41 on proof of any of the following facts, namely —

(a) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible,

(b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency,

(c) that the insolvent has continued to trade after knowing himself to be insolvent,

(d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it,

(e) that the insolvent has failed to account satisfactorily for any loss of [illegible]

[illegible] of the [illegible] due,

(h) that the insolvent has on any [illegible] ed an insolvent or made a composition or arrangement with the creditors,

(i) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust

(2) For the purposes of this section, the report of the receiver shall be deemed to be evidence, and the Court may presume the correctness of any statement contained therein

(3) The powers of suspending, and of attaching conditions to, an insolvent's discharge may be exercised concurrently

Clause (a)—*Vide* 80 Ind Cas 54

Adjudication to be annulled on failure to apply for discharge

43 (1) If the debtor does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the Court may direct, or if the debtor does not apply for an order of discharge within the period specified by the Court, the order of adjudication shall be annulled, and the provisions of section 37 shall apply accordingly

(2) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled under sub section (1) the Court may, if it thinks fit re commit the debtor to his former custody and the officer in charge of the prison to whose custody such debtor is so recommitted shall receive such debtor into his custody according to such re commitment and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if no order of adjudication had been made

Notes —Where a creditor s petition to take action under this section is dismissed he is a person aggrieved and has a right of appeal 45 M L J 804=18 L W 837=1923 M W N 838 The provisions of sub section (1) are mandatory 105 Ind Cas 912=4 O W N 993 Without an order of the Insolvency Court the insolvent is not discharged automatically at the end of the period fixed in the order of adjudication for an application for discharge 99 A 201=100 Ind Cas 320=25 A L J 152 The provisions of this section are mandatory and there is no d scretion in the Court to enlarge the time after the expiry of the period fixed by the Court for an

T 776=A I R itor from realising ently an unsecured annul the order section is clearly

mandatory 97 Ind Cas 706=A I R 1926 Mad 942 But the Court has power under section 27 to extend the time for the debtor to apply for discharge even after the expiry of the period originally fixed 91 Ind Cas 467=A I R 1926 Sind 94 This section is mandatory A I R 1928 Mad 265 When an insolvency has been annulled under the provisions of s 43 of the Provincial Insolvency Act the Court ceases to have jurisdiction to entertain, here or determine the application under s 53 or 54 of the Act A I R 1933 Rang 223=A L R 1933 Rang 197=145 Ind Cas 320 (F B)

Effect of order of discharge

44 (1) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Crown,

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party,

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party, or

(*d*) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898 *

(2) Save as otherwise provided by sub section (1) an order of discharge shall release the insolvent from all debts provable under this Act

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co trustee with the insolvent,

* Act V of 1898

or was jointly bound or had made any joint contract with him or any person who was surety for him

Notes ... debts' *vide* 12 C 445 30 C 1040
India 45 B 550 The effect of the
from all debts with the exceptions
of s 44 A I R 1933 All 340—144
Ind Cas 888 The rule of law laid down in section 44 (2) of the Act is based on a
otice Therefore where the debtor
him from liability whether notice
to the creditor provided no ques
=A I R 1933 All 600=1933 A L
J 1340

PART III

ADMINISTRTION OF PROPERTY

Method of proof of debts

45 A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently and may receive dividends equally with the other creditors deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted

Debt payable at a future time

Notes —It may be doubted whether a claim payable at a future time is a 'debt for the purpose of rateable distribution Rule 21 of the second schedule to the English statutes of 1883 has accordingly been adopted so as to include such claims —*Law Member's note*

46 When there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party and the balance of the account, and no more shall be claimed or paid on either side respectively

Mutual dealings and set off

Notes —In *Forster* v *Wilson*, 12 M & W 191 *Parke B* said The right of set off in bankruptcy does not appear to rest on the same principle as the right of set off between solvent parties The object of this clause is not to avoid cross actions
would be unavail
is really due from

main ground for the decision in th
conceive that the principle of that decision is correct" See also 23 Ind Cas 927=
95 P L R 1914 Th
and in the same right
claim 19 C 146, 18
33 M 53, A I R 1

47. (1) Where a secured creditor realises his security he may prove for the balance due to him after deducting the net amount realised

Secured creditors

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors he may prove for his whole debt

(3) Where a secured creditor does not either realise or relinquish his security, he shall before being entitled to have his debt entered in the schedule state in his proof the particulars of his security, and the value at which he

assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed

(4) Where a security is so valued the Court may at any time before realisation redeem it on payment to the creditor of the assessed value

(5) Where a creditor, after having valued his security, subsequently realises it the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor

(6) Where a secured creditor does not comply with the provisions of this section he shall be excluded from all share in any dividend

he may relinquish his security for the general body of creditors and prove for the whole debt that may be due to him, or he may value his security and receive a dividend for the balance that may be due to him subject to the right of the Court to redeem the security He may also ignore the Insolvency Court altogether in which case he must be content with his security if his security should prove insufficient 2 Pat 724, see also 88 Ind Cas 934, 51 Ind Cas 192, 48 M 750, 34 C L J 167, 85 Ind Cas 543, 47 M 605, 41 A 481 As to the meaning of secured creditor *vide*, 37 A. 383=26 Ind Cas 263 Section 47 does not empower a mortgagee to authorise the Official Receiver to sell property (equity of redemption) which does not vest in him A I R 1933 Lah 1010

48 (1) On any debt or sum certain whereon interest is not reserved or agreed for and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act the creditor may prove for interest at a rate not exceeding six per centum per annum—

Interest

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication, or

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication

(2) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per [illegible] a creditor to receive out [illegible] which he may be entitled

Notes—It is not open to an insolvency Co[illegible] than six percent after the date of adjudication [illegible] A I R 1926 All 361 Under sub section (2) [illegible] of interest when all the debts proved have been [illegible] L J 244= A I R 1926 All 249, see also 1 M [illegible] a creditor s claim made in insolvency proceedings amounts to a decree and the rule of *damdupat* is not applicable to a claim so admitted 33 C 1269=10 C W N 884

49 (1) A debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt

Mode of proof

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt and shall specify the vouchers (if any) by which the same can be substantiated The Court may at any time call for the production of the vouchers

Notes—Where the affidavit is defective, the proof should be adjourned and not rejected *Exparty Moberley*, 2 M & A 23 As regards the right of the creditor who has proved his debts, *vide*, 26 C W N 653

50 (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

Disallowance and reduction of entries in schedule

(2) The Court may also, after like inquiry expunge an entry or reduce the amount of a debt upon ... appointed, or where ... case of a composition o...

Scope—There is nothing in this section which says that any question of title raised between two scheduled creditors will be decided by the Insolvency Court 24 A L J 334=92 Ind Cas 14=A I R 1926 All 244 As regards order of Court expunging ... s 38 and an order of an... 556 (2)=A I R 1926 ... l Receiver to expunge a ... ver being to move the Court und... 97 Ind Cas 407=A ... power to review his c... under section 24 is ... Cas 761=1921 M W ... no power to expunge the name of a creditor ... 342

Effect of insolvency on antecedent transactions.

51 (1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition

Restriction of rights of creditor under execution

(2) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver

Notes—Where the Court holding the assets of the judgment debtor is the same as the Court attaching the same on behalf of the creditor in another suit the assets ... the meaning of s 51, unless the money ... tor is ordered to be transferred to the ... nd Cas 348, 44 M 100 This section ... same date on which the judgment ... nitted 3 Mys L J (B & C) ... " qualifies "assets realised," ... admission of the petition ... Mad 248=20 L W 872=47 ... rd assets, *vide* 16 B 98, 26 M ... J 327 The principle underlying ... Full Bench of the Calcutta High ... , 29 B 405, 39 All 537

52. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an insolvency petition by or against the debtor has been admitted, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the suit in which the decree was made and of the execution shall be a first charge on the property so deli

Duties of Court executing decree as to property taken in execution

vered and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge

Notes —Section 52 of the Act deals entirely with property which has not been brought to sale and is inapplicable to a case where property has been brought to sale A L R 1933 M 899=A I R 1933 M 703=65 M L J 402 This section does not apply to mortgage decree holders, and money decree holders who have obtained [illegible]

ched in
There
ecuting
[illegible]

705=19 S L R 35=A I R 1926 Sind 199 Section 52 refers to property which would include both the movable and immovable property of the debtor 95 Ind Cas 705=A I R 1929 Sind 199 An application [illegible]
Court to deliver property to the receive
receiver has been clothed by the Insolvency
the insolvent's property 94 Ind Cas 126=
The 'receiver' referred to in s 52 is the receiver appointed under para (1) of s 56 after the passing of the order of adjudication and not the interim Receiver appointed under s 20 of the Act 95 Ind Cas 705=A I R 1926 Sind 199

Avoidance of voluntary transfer

53 Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent "on a petition presented" * within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court

Notes —Generally the Official Receiver alone should move the Court in the matter of setting aside an alienation in fraud of creditors On the matter being taken [illegible]

section and the proceedings should be taken only in his name If no receiver is appointed for the insolvency then the Court itself can move or the creditors can move the Court to annul the transfer 6 N L J 47=19 N L R 32=71 Ind Cas 418 Where the Official Receiver puts in an application praying for taking action under s 53 or in the alternative under s 54 in case the alienee was a creditor, the Court is entitled to proceed under s 53 and the onus of proof is on the alienee 99 Ind Cas 683=A I R 1927 Mad 412 Three conditions are required to save a transaction from the mischief of the section that the transferee is a purchaser or
valuable consideration.
i fact dealing with the
rest of the facts, but
ed as a whole 103 Ind
n paid for the transfer
A. I R 1921 Nag
er nor the Insolvency
Court challenges the validity of a transfer by the insolvent it is not open to a previous gratuitous tansferor to challenge the validity of the transfer 102 Ind Cas 92 In a case of an application under this section, the burden is on the transferee to prove that the transaction under which he claims was for valuable consideration and made in good faith 101 Ind Cas 583=A I R 1927 Lah

* Added by Act X of 1930

415, see also 104 Ind Cas 822=A I R 1927 Cal 766 Section 53 contemplates that action should be taken by the Official Receiver to set aside a fraudulent transfer, but this does not mean that no one else can set the law in motion even when the receiver refuses or neglects to act In such cases creditors can apply 1924 Lah 553 Whe
vent th
faith ar
transfe
53 93 Ind Cas 331=
A I R 1926 Sind 133

Effect of Amendment by Act X of 1930—The view that the *terminus a quo* should be the date of the presentation of the petition is in pursuance of the policy underlying the Act, and the contrary view leads to an abuse of the provision by dishonest and litigious debtors The clause gives effect to the former view Section 53

person challenging the *bona fide* of the transfer and not on the transferee A I R 1933 Pat 564=14 P L T 739, see also 29 N L R 164=A I R 1933 Nag 188, 37 C W N 675=A I R 1933 Cal 689

54 (1) Every transfer of property, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof be deemed fraudulent and void as against the receiver, and shall be annulled by the Court

Avoidance of preference in certain cases

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent

Notes—Before a transfer can be avoided under this section it must be definitely proved that in making the transfer in favour of a creditor the debtor acted with the view of giving him preference over other creditors and the onus of proving that such

Cas 440 54 a fraudulent preference by the debtor himself and the question for
Cas 331=A I
amounts to an a
imports free cho
was voluntary and due to extraneous influence such as pressure or threat from the creditors A L R 1934 Lah 84=34 P L R 436

***54A** A petition for the annulment of any transfer under section 53, or of any transfer, payment, obligation or judicial proceeding under section 54 may be made by the receiver or, with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such petition

By whom petitions for annulment may be made

55 Subject to the foregoing provisions of this Act with respect to the effect of insolvency on an execution, and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

Protection of bona fide transactions

* Inserted by Act 39 of 1926

(*a*) any payment by the insolvent to any of his creditors ;
(*b*) any payment or delivery to the insolvent ;
(*c*) any transfer by the insolvent for valuable consideration ; or
(*d*) any contract or dealing by or with the insolvent for valuable consideration

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Notes—Sections 53 and 55 of this Act are taken *verbatim* from the English Bankruptcy Act 11 O L J 599=79 Ind Cas 888 This section is intended to protect *bona fide* purchaser 62 Ind Cas 752=19 A L J 240, A. L R 1933, Mad 496

Proviso—Person claiming the benefit of the proviso should show that he had notice of insolvency petition A L R 1932 Sind 163=143 Ind Cas 628.

Realisation of Property

56 (1) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent and such property shall *thereupon vest in such receiver*

Appointment of receiver

(2) Subject to such conditions as may be prescribed, the Court may—

(*a*) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property and

(*b*) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is from the possession or custody thereof

Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove

(4) Where a receiver appointed under this section—

(*a*) fails to submit his accounts at such periods and in such form as the Court directs, or

(*b*) [illegible]

(*c*) [illegible]

the Cou[illegible]
proceeds [illegible]
occasioned by him

(5) The provisions of this section shall apply, so far as may be, to interim receivers appointed under section 20

Notes—As regards the status of a receiver, *vide* 30 C L J 515 ; 18 C W N 366 The receiver can take possession properties of an insolvent 42 C 225, 20 M L T 334=35 Ind Cas 610 He is not a judicial officer 22 C W N 707 As regards the meaning of "assets" *vide* 5 Rang 623 An order under sub section (3) is not appealable as of right 28 Punj L R 141.

57 (1) The Local Government may appoint such persons as it thinks fit (to be called "Official Receivers") to be receivers under this Act within such local limits as it may prescribe

Power to appoint Official Receivers

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the receiver for the purposes of every order appointing a receiver or an interim receiver issued by any such Court, unless the Court for special reasons otherwise directs

(3) Any sum payable under clause (*b*) of sub section (2) of section 56 in respect of the services of an Official Receiver shall be credited to such fund as the Local Government may direct

(4) Every Official Receiver shall receive such remuneration out of the said fund or otherwise as the Local Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

Notes—It is desirable that the Official Receiver should be given the control of all insolvencies in the district unless very exceptional reasons such as those connected with the personality of the receiver, are put forward 46 M 405=44 M L. J 251.

Powers of Court if no receiver appointed

58 Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Act

Notes—In the absence of a receiver the property vests in the Court 40 A 197=16 A L J 32, 9 N L R 182

Duties and powers of receiver

59 Subject to the provisions of this Act, the receiver shall with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent,

(*b*) give receipts for any money received by him,

and may, by leave of the Court, do all or any of the following things, namely —

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same,

(*d*) institute defend or continue any suit or other legal proceeding relating to the property of the insolvent,

(*e*) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court,

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;

(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon, and

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold

Notes—The provisions of the C P Code do not apply to a sale of an insolvent's property by an Official Receiver under this section 74 Ind Cas 802=26 O C 319=9 O & A L R 440 [illegible]
receiver to institute suits need not [illegible]
matter between the receiver and the [illegible]
as a valid defence to the suit 89 [illegible]
Insolvency Act it is not competent for the Official Receiver to prosecute an appeal which relates to a claim for damages only and does not affect any property of the insolvent 51 M L J 613=1926 Mad 1133 A receiver acting under this section is not a Court 41 M 440, se[illegible]
been appointed he represe[illegible]
should move in the matte[illegible]
wants to attach the insolv[illegible]
any matter to the notice [illegible]
153=146 Ind Cas 494

(a) any payment by the insolvent to any of his creditors,
(b) any payment or delivery to the insolvent,
(c) any transfer by the insolvent for valuable consideration; or
(d) any contract or dealing by or with the insolvent for valuable consideration

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Notes —Sections 53 and 55 of this Act are taken *verbatim* from the English Bankruptcy Act 11 O L J 599=79 Ind Cas 888 This section is intended to protect *bona fide* purchaser 62 Ind Cas 752=19 A L J 240, A L R 1933 Mad 496

Proviso —Person claiming the benefit of the proviso should show that he had notice of insolvency petition A L R 1932 Sind 163=143 Ind Cas 628.

Realisation of Property

56 (1) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent and such property shall thereupon vest in such receiver

Appointment of receiver

(2) Subject to such conditions as may be prescribed, the Court may—

(a) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property and

(b) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is from the possession or custody thereof

Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove

(4) Where a receiver appointed under this section—

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the balance due from him thereon as the Court directs or

(c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him

(5) The provisions of this section shall apply, so far as may be, to interim receivers appointed under section 20

Notes.—As regards the status of a receiver, *vide* 30 C L J 515, 18 C W N 365 The receiver can take possession properties of an insolvent 42 C. 225, 20 M L T 334=35 Ind Cas 610 He is not a judicial officer 22 C W N 707 As regards the meaning of "assets" *vide* 5 Rang 623 An order under sub section (3) is not appealable as of right. 28 Punj L. R. 141.

57 (1) The Local Government may appoint such persons as it thinks fit (to be called 'Official Receivers') to be receivers under this Act within such local limits as it may prescribe.

Power to appoint Official Receivers.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the receiver for the purposes of every order appointing a receiver or an interim receiver issued by any such Court, unless the Court for special reasons otherwise directs

(3) Any sum payable under clause (*b*) of sub section (2) of section 56 in respect of the services of an Official Receiver shall be credited to such fund as the Local Government may direct

(4) Every Official Receiver shall receive such remuneration out of the said fund or otherwise as the Local Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

Notes—It is desirable that the Official Receiver should be given the control of all insolvencies in the district unless very exceptional reasons such as those connected with the personality of the receiver, are put forward 46 M 405=44 M. L J 251

Powers of Court if no receiver appointed

58. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Act

Notes—In the absence of a receiver the property vests in the Court 40 A 197=16 A L J. 32; 9 N L R. 182

Duties and powers of receiver.

59 Subject to the provisions of this Act, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent,

(*b*) give receipts for any money received by him,

and may, by leave of the Court, do all or any of the following things, namely —

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same;

(*d*) institute defend or continue any suit or other legal proceeding relating to the property of the insolvent,

(*e*) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court,

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;

(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon, and

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold

Notes—*The provisions of the C P Code do not apply to a sale of an* insolvent's property by an Official Receiver under this section 74 Ind Cas 802=26 O C 319=9 O & A L [illegible] receiver to institute suits [illegible] matter between the receive [illegible] as a valid defence to th[illegible] Insolvency Act it is not [illegible] which relates to a claim for damages only and does not affect any property of insolvent 51 M L J 613=1926 Mad 1133 A receiver acting under this section not a Court 41 M 440; see also 22 C W N 704 Where an Official Receiver been appointed he represents the whole body of creditors ordinarily, it should move in the matter when a creditor holding a decree against the wants to attach the insolvent's property, although it is open to a credito[illegible] any matter to the notice of the Official Receiver or of the Court A I R [illegible] 153=146 Ind Cas 494

*59A. (1) The Court, if specially empowered in this behalf by an order of the Local Government, or any officer of the Court so empowered by a like order, may, on the application of the receiver or any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in the prescribed manner any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court or such officer, as the case may be, may deem capable of giving information respecting the insolvent or his dealings or property, and the Court or such officer may require any such person to produce any documents in his custody or power relating to the insolvent or to his dealings or property

Power to require information regarding insolvent's property

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court or such officer at the time appointed, or refuses to produce any such document, having no lawful impediment made known to and allowed by the Court or such officer, the Court or such officer may, by warrant, cause him to be apprehended and brought up for examination

(3) The Court or such officer may examine any person so brought before it or him concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner

60 (1) In any local area in which a declaration has been made under section 68 of the Code of Civil Procedure, 1908,† and is in force, no sale of immovable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver, but, after the other property of the insolvent has been realised, the Court shall ascertain—

Special provisions in regard to immovable property

(a) the amount required to satisfy the debts proved under this Act after deducting the monies already received,

(b) the immovable property of the insolvent remaining unsold, and

(c) the incumbrances (if any) existing thereon,

and shall forward a statement to the Collector containing the particulars aforesaid, and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by paragraphs 2 to 10 of the Third Schedule to the said Code as he thinks fit, and subject to the provisions of those paragraphs so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers

(2) Nothing in his Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immovable property, and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

Notes—Where the sale of insolvent's property paying land revenue is entrusted to the Collector under this section, the Civil Court has no authority of any kind to interfere with the proceedings of the sale officer 49 A 272=25 A L J 197=98 Ind Cas 1046=A. I. R 1927 All 203 Transfer of insolvent's immo- [illegible]

* Inserted by Act 39 of 1926 † Act V of 1908

Distribution of Property

Priority of debts

61 (1) In the distribution of the property of the insolvent, there shall be paid in priority to all other debts—

(*a*) all debts due to the Crown or to any local authority and

(*b*) all salary or wages, not exceeding twenty rupees in all of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition

(2) The debts specified in sub section (1) shall rank equally between them selves and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts Where there is a surplus of the separate property of the partners it shall be dealt with as part of the partnership property and where there is a surplus of the partnership property it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property

(5) Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference

(6) Where there is any surplus after payment of the foregoing debts it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule

Crown debts —The debts which when recovered fall to the coffers of the State are crown debts 12 C 445, 5 H B C R O C 23 see also 33 C 1040 The Crown debts are not entitled to priority over mortgage debts 29 A 537 28 M 422, 22 C W N 793=45 C 653

Clause (b)—The managing director of a company is not a clerk or servant (1900) 2 Ch 349

Clause (4)—*Vide* 34 P L R 639=143 Ind Cas 755

Clause (6)—*Vide* 97 Ind Cas 556=24 A L J 441=A I R 1926 All 361

Calculation of dividends

62 (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

(*a*) debts provable under this Act and appearing from the insolvent s statements or otherwise to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs

(*b*) debts provable under this Act, the subject of claims not yet determined,

(*c*) disputed proofs or claims and

(*d*) the expenses necessary for the administration of the estate or otherwise

(2) Subject to the provisions of sub section (1) all money in hand shall be distributed as dividends

Notes —The Code of Civil Procedure does not regulate the payment of dividends and there is accordingly no direction with regard to provision for debts not provable

at once The principle has already been recognised that a creditor can claim to prove at any time while there are still undisbursed assets of the insolvent. It is essential however to qualify this by providing for the maintenance of any prior payment of dividends and also to protect a receiver against suit for dividends unpaid, the Court being at the same time vested with the power to order payment with costs and interest, or interest improperly withheld—*Law Member's Note*

Right of creditor who has not proved debt before declaration of a dividend

63 Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the receiver any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein

Notes—This section contemplates payment in full to each succeeding creditor who comes in after the framing of the schedule in the order of the proving of his [illegible] al Receiver liable [illegible] Where a creditor [illegible] been framed, he [illegible] would be caused thereby A I R 1933 Sind 370=A I R 1933 Sind 330

Final dividend

64 When the receiver has realised all the property of the insolvent or so much thereof as can, in the opinion of the Court, be realised without needlessly protracting the receivership, he shall declare a final dividend, but before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice he will proceed to make a final dividend without regard to their claims After the expiration of the time so limited, or if the Court, on application by any such claimant grants him further time for establishing his claim then on the expiration of such further time, the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons

Notes—Under s 64 of the Act a creditor entered in the schedule is entitled to be paid his dividend out of the assets of the insolvent and the issue of a succession certificate is not necessary for the same 1926 M W N 560=97 Ind Cas 411=A I R 1026 Mad 899=51 M L J 349 In the absence of notice to the creditor the matter can be reopened by him 47 M 91=80 Ind Cas 600, but see 100 Ind Cas 791

No suit for dividend

65 No suit for a dividend shall lie against the receiver, but where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it and also to pay out of his own money interest thereon for the time that it is withheld and the costs of the application

Management by and allowance to insolvent

66 (1) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof or to carry on the trade (if any) of the insolvent for the benefit of the creditors and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct

(2) [illegible] just to [illegible] or in cc [illegible] but any such allowance may, at any time be varied or determined by the Court

Notes—The Court has discretion in allowing reasonable allowances to the insolvent 45 A 364=21 A L J 716=73 Ind Cas 413 What the priest does for pilgrims is not a trade. 40 C 678 As to the meaning of trade *vide* 24 C W N 58-

67 The insolvent shall be entitled to any surplus remaining after payment in full of his creditors with interest as provided by this Act, and of the expenses of the proceedings taken thereunder

Right of Insolvent to surplus

Notes—An insolvent can assign any prospective surplus that may remain over after his estate has been fully administered in the insolvency, such assignment is of a contingent interest and does not give the assignee the right to intervene until it is ascertained whether or not there is a surplus 73 Ind Cas 379

67A* (1) The Court may, if it thinks fit, authorise the creditors who have proved their debts to appoint a committee of inspection for the purpose of superintending the administration of the insolvent's property by the receiver

Committee of inspection

(2) The persons appointed to a committee of inspection shall be creditors who have proved their debts or persons holding general powers of attorney from such creditors.

The committee of inspection shall have such powers of control over the proceedings of the receiver as may be prescribed

Appeal to Court against receiver

68. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just

Appeal to Court against receiver.

Provided that no application under this section shall be entertained after the expiration of twenty one days from the date of the act or decision complained of

Notes—This section provides a speedy remedy to which recourse can be had if the person agrees to seek it But it is not the only remedy open to him if he seeks the remedy mentioned there, he must come within the time fixed 21 A L J 737=. L R 4A 483=1921 A 40 The word "act" in this section cannot include mere omission or refusal to take steps at the request of a creditor 18 L W 857 A stranger to the insolvency proceedings if aggrieved by any act of the Official Receiver may seek his redress in the ordinary Civil Courts or may apply under s 68 to the insolvency Court In the latter case, he must comply with the terms of this section 26 O C 319=9 O & A L R 440=74 Ind Cas 802 Where the sale by an insolvent father was set aside by the receiver who afterwards advertised for sale of the entire family property, the son canno [illegible] he sale b the rece ver under this section 98 Ind Cas 1065 [illegible] all the grounds upon which it is challen [illegible] =A I R 1927 Cal 834 An *ad interim* r[illegible] plication, cannot pass a final order in a c[illegible] 26=A I R 1926 P 291 The District Ju[illegible] receiver's report except by consent of parties until 21 days have elapsed within which the creditors aggrieved can apply to the Court for the reversal or modification of the act or decision by which they are aggrieved 94 Ind Cas 332=A I R 126 Cal 826

Cases—1924 All 40, 78 Ind Cas 857=46 M. L J 242

PART IV

PENALTIES

69 If a debtor, whether before or after the making of an order of adjudication,—

Offences by debtors

(a) wilfully fails to perform the duties imposed on him by section 22 or to deliver up possession of any part of his property which is divisible among his creditors under this Act, and which is for the time being in his possession or

* Inserted by Act 39 of 1926

Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit

Provided, further, that any such person aggrieved by a decision of the District Court on appeal from a decision of a subordinate Court under section 4 may appeal to the High Court on any of the grounds mentioned in sub-section (1) of section 100 of the Code of Civil Procedure, 1908 *

(2) Any such person aggrieved by any such decision or order of a District Court as is specified in Schedule I, c
from an order made by a subordinate C

(3) Any such person aggrieved by
otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court by leave of the District Court or of the High Court

(4) The periods of limitation for appeals to the District Court and to the High Court under this section shall be thirty days and ninety days respectively

Notes—Where a creditor is a party to an application to take action to take account under ss 53 and 54 and the same is dismissed he is a person aggrieved and has a right of appeal 18 L W 857 Whereby an order of Court a Special Receiver is appointed in suppression of the Official Receiver, the latter has a right of appeal 46 M 405 If a receiver not duly appointed makes an order against the debtors of the insolvent, the aggrieved party can appeal 47 B 584=1928 Bom 233 *An appeal lies against an order passed under s 37 100 Ind Cas 137 Under* sub section (3) leave to appeal may be obtained even after the filing of the appeal and such leave would take effect retrospectively 50 M 815 An appeal can be preferred against an order annulling an adjudication under s 43 only with the leave of the Court 100 Ind Cas 137 In an appeal leave of the District Judge is required where he disallowed the insolvent's objections to the sale of the occupancy rights in certain lands 103 Ind Cas 623=A I R 1927 Lah 424 A second appeal will lie under this section against a
provided by s 100 C P Code
order of adjudication, the insolvent
R 432=80 Ind Cas 482 In an
Commissioners who have been i
lie to the District Court and not to the High Court 80 Ind Cas 858 Appeal from order of Sub Court does not lie to High Court but to the District Court A I R 1933 Lah 307=34 P L R 176 It is not
order of the Court annulling a transfer
the alience for the insolvent is not a perso
C) 15 The fact that the heirs of one of
notice of the appeal will not prevent the appeal from being preceeded with and decided Only the heirs may have the proceedings re opened on the ground of non service of notice 44 C L J 108=97 Ind Cas 1013=A I R 1926 Cal 1210

PART VII

MISCELLANEOUS

76 The costs of any proceeding under this Act, including the costs of maintaining a debtor in the civil prison, shall subject to any rules made under this Act be in the discretion of the Court in which the proceeding is had

Costs

Notes—Under the corresponding section of the Presidency Towns Insolvency Act it was held that the order for costs should not be directed to be limited to the assets in the hands of the Official Assignee when the Respondent was not in any way in default for which he might be partially mulcted in costs 23 C W N 431

77 All Courts having ju
of insolvency, and an order of a Court seeking

Courts to be auxiliary to each other

* Act V of 1908

aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions

Notes—The Courts should be auxiliary to each other 33 C 1062, 40 C 78=18 Ind Cas 908, 33 B 462, 10 Bom L R 84, see also 78 Ind Cas 620, 22 Bom L R 1172

78 (1) The provisions of section 5 and 12 of the Indian Limitation Act, 1908,* shall apply to appeals and applications under this Act and for the purpose of the said section 12 a decision under section 4 shall be deemed to be a decree

Limitation

(2) Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or application for the execution of a decree, [other than a suit or application in respect of which the leave of the Court was obtained under sub-section (2) of section 28] which might have been brought or made but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded

Provided that nothing in this section shall apply to a suit or application in respect of a debt provable but not proved under this Act

Scope—This section empowers a Court to excuse delay in the presentation of an appeal or application if it is fit case for exercising delay 18 L W 857, see also 45 M L J 844=1923 M W N 746=18 L W 808 Where an appeal was barred while Act III of 1907 was in force the District Judge under this section had no power to excuse the delay, so as to revive a barred right 44 M L J 304=72 Ind Cas 488

79. (1) The High Court may, with the previous sanction in the case of the High Court of Judicature at Fort William in Bengal, of the Governor General in Council, and in the case of any other High Court, of the Local Government, make rules for carrying into effect the provisions of this Act

Power to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

(c) for the procedure to be followed where the debtor is a firm,

(d) for the procedure to be followed in the case of estates to be administered in a summary manner, and

"(e) for any matter which is to be or may be prescribed" †

(3) All rules made under this section shall be published in the *Gazette of India* or in the local official Gazette as the case may be, and shall, on such publication, have effect as if enacted in this Act

Notes.—The rules framed under Act III of 1907 will hold good if they are inconsistent with this Act 93 Ind Cas 903

80 (1) The High Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Act the Official Receiver shall subject to the directions of the Court, have all or any of the following powers namely —

Delegation of powers to Official Receivers

(a) ‡

(b) to frame schedules and to admit or reject proofs of creditors,

(c) ‡

(d) ‡

* Act IX of 1908

† Inserted by Act 39 of 1926

‡ Clauses (a) (c) and (d) were omitted by Act 39 of 1926

(*e*) to make interim orders in any case of urgency ; and

(*f*) to hear and determine any unopposed or *ex parte* application

(2) Subject to the appeal to the Court provided for by section 68, any order made or act done by the Official Receiver in the exercise of the said powers shall be deemed the order or act of the Court

Power of Local Government to bar application of certain provisions to certain Courts

81 Any Local Government,* may, by notification in the local official Gazette, declare that any of the provisions of this Act specified in Schedule II shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Act in any part of the territories administered by such Local Government.

Savings

82 Nothing in this Act shall—

(*a*) affect the Presidency Towns Insolvency Act, 1909 †‡ or

(*b*) apply to cases to which Chapter IV of the Dekkhan Agriculturists' Relief Act, 1879, § is applicable

83 (1) Repeals—*Repealed by Act 12 of 1927*

(2) Where in any enactment or instrument in force at the date of the commencement of this Act, reference is made to Chapter XX (of Insolvent Judgment debtors) of the Code of Civil Procedure, 1877 ‖ or of the Code of Civil Procedure 1882,¶ or to any section of either of those Chapters, such reference shall, so far as may be practicable, be construed as applying to this Act or to the corresponding section thereof

SCHEDULE I

[*See section 75 (2)*]

Decisions and Orders from which an appeal lies to the High Court under section 75 (2)

Section	Nature of decision or order
4	[illegible]
25	[illegible]
26	[illegible]
27	[illegible]
33	[illegible]
35	Order annulling adjudication
37	[illegible] debtor's property shall [illegible]
41	[illegible]
50	Order disallowing or reducing entries in the schedule
53	Order annulling a voluntary transfer
54	Decision that a transfer of property is a preference in favour of a creditor **

* Certain words after this repealed by Act 38 of 1920 have been omitted
† Act III of 1909
‡ Certain words after this repealed by Act 8 of 1930 have been omitted
§ Act XVII of 1879
‖ Act X of 1877
¶ Act XIV of 1882
** The entry relating to section 69 has been omitted by Act 12 of 1927

SCHEDULE II

(See section 81)

Provisions of the Act application of which may be barred by Local Governm

Provisions of the Act	Subject
Section	
26	Award of compensat on
28, sub section (3)	Reputed property of insolvent
34	Debts provable under the Act
38, 39, 40	Compositions and schemes of arrangement
42, sub sections (1) and (2)	Obligation to refuse absolute discharge
45, 46, 47, 48, 49, 50	Method of proof of debts
51, 52, 53, 54, 55	Effect of insolvency on antecedent transact ons
61 [except clause (a) of sub section (1) and sub section (4)]	Priority of debts
62, 63, 64, 65	Dividends
66	Management by and allowance to insolvent
72	Penalty for obtaining of credit by undischarged inso

SCHEDULE III

(Rep by Act 12 of 1927)

THE PROVINCIAL SMALL CAUSES COURTS ACT 1

ACT No IX OF 1887

RECEIVED THE G -G S ASSENT ON 24TH FEBRUARY, 1887

An Act to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency Towns

C

of S

of

at F

as follows —

CHAPTER I

PRELIMINARY

Title extent and commencement

1 (1) This Act may be called the vincial Small Causes Courts Act 1887

(2) It extends to the whole of British India , and

(3) It shall come into force on the first day of July, 1887

2. (1) [*Repeal of enactments*]—*Repealed by Act XII of 1891*

Construction

(2)* All Court constituted, limits fixed, places appointed, appointments, declarations and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act No XI of 1865† (*an act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits af the ordinary original civil jurisdiction of the High Courts of Judicature*), or under any enactment repealed by that Act, shall, so far as may be, be deemed to have been respectively constituted, fixed, appointed, made, conferred, prescribed, given and published under this Act

(3) Any enactment or document referring to Act No XI of 1865 or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof

Savings

3 Nothing in this Act shall be construed to affect—

(*a*) any proceedings before or after decree in any suit instituted before the commencement of this Act , or

(*b*) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of village-munsifs or village panchayats, under the provisions of the Madras Code, or of village munsifs under the Dekkhan Agriculturists' Relief Act, 1879 , or

(*c*) any local law or any special law other than the Code of Civil Procedure

Notes —The term 'suit' refers to regular suits before a Collector under Act X of 1859 2 M H C R 22 , see also 2 M H C R 82 , 1 M H C R 443

Definition

4 In this Act, unless there is something repugnant in the subject or context, ' Court of Small Causes'' means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

Notes —A District Munsif is a Small Cause Court Judge under Madras Act IV of 1863 4 M H C R 149

CHAPTER II

CONSTITUTION OF COURTS OF SMALL CAUSES

Establishment of Courts of Small Causes

5 (1) The Local Government‡ may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a H[illegible] [illegible] Presidency town.

(2) The local lim[illegible] s shall be such as the Loca[illegible] ıeld at such place or places [illegible] ppoint.

Judge

6 (1) When a Court of Small Causes has been established, the Local Government shall by order in writing, appoint a Judge of the Court

(2) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs

* In s 2 (2) the first words "But' having been repealed by Act XII of 1891, has been omitted

† Act XI of 1865 has been repealed by s 2 (1) of this Act

‡ Certain words repealed by Act 4 of 1914 have been omitted,

Appointment of times of sitting in certain circumstances

7 (1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge

(2) Notice of the times shall be published in such manner as the High Court from time to time directs

Additional Judges

8 (1) The Local Government* may, by order in writing, appoint "Additional Judges"† of a Court of Small Causes or of two or more such Courts

(2) "An Additional"† Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge

(3) The Judge may withdraw from "an Additional"† Judge any business pending before him.

(4) When the Judge is absent, the "senior†" Additional Judge may discharge all or any of the functions of the Judge

Suspension and removal of Judges

9 A Judge or Additional Judge of a Court of Small Causes may be suspended or removed from office by the Local Government

Power to require two Judges to sit as a bench

10 The Local Government, after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes or a Judge and an Additional Judge of a Court of Small Causes shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order

Decision in case heard by a bench

11 (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI of the Code of Civil Procedure shall apply to the reference

(2) If they differ on any matter other than a matter specified in sub section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him shall prevail

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge

Registrar

12 (1) The Local Government may appoint to a Court of Small Causes an officer to be called the Registrar of the Court

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court

(3) The Local Government may, by order in writing, confer upon a Registrar within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees

(4) The Registrar shall try such suits cognizable by him as the judge may, by general or special order, direct

(5) A Registrar may be suspended or removed from office by the Government

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* Certain words repealed by Act 4 of 1914 have been omitted

† The words within quotations have been substituted by Act XI of 1915

13 Subject to any enactment for the time being in force, and to any orders made by the Local Government in this behalf the law or practice for the time being applicable, to the appointment, punishment and transfer of ministerial officers of a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which a Court of Small Causes is established shall, so far as it can be made applicable, apply to the appointment, punishment and transfer of ministerial officers of the Court of Small Causes other than the Registrar (if any) of that Court

Other ministerial officers

14 (1) The ministerial officers of a Court of Small Causes shall in addition to any duties mentioned in this Act or in any other enactment for the time being in force as duties which are or may be imposed on any of them discharge such duties of a ministerial nature as the Judge directs

Duties of ministerial officers

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed

CHAPTER III

JURISDICTION OF COURTS OF SMALL CAUSES

15 (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes

Cognizance of suits by *Courts of Small Causes*

(2) Subject to the exceptions specified in that schedule, and to the provisions of any enactment for the time being in force all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes

(3) Subject as aforesaid the Local Government may, by order in writing direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order

for malicious prosecut on was in respect of a personal injury from which actual and ascertained pecuniary damage had resulted the whole suit is one of a nature cognizable by a Small Cause Court 3 A 747 A suit to recover road cess and public

t 9 C 183 The Court has no

other than house rent 3 L B

volves a question and determina

uld return the plaint under s 23

A W N 1888, 192 A

ment Railway Company

cognizance of a Small Cause Court 97 P R 1894 A suit for recovery of arrears of rent of a *verum pattam* tenure, is a suit triable

the

the

(*munafa*) of the bazar from April, 1894

triable by a Small Cause Court 4 O C

es does not relate to any injury to h s r

of land over which a water course runs,

sequently cognizable by a Small Cause Court. 71 P R 1896 A Court of Small

causes can entertain a suit, the principal purpose of which is to determine a right of immovable property, provided the suit in form does not ask for this relief but for payment of a sum of money 15 Bom L R 773=20 Ind Cas 974=37 B 675 (F B)

16. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable

Exclusive Jurisdiction of Courts of Small Causes

Notes—Where both the lower Courts tried a small cause suit as an ordinary suit and the lower Appellate Court directed the plaintiff to pay the defendant's costs, the decree of the District Judge must, notwithstanding this section, be treated as effective, so as to enable the defendant to recover the amount of costs 1 M L T [illegible] the Munsiff on the original side [illegible] the consequent return of the [illegible] to determine such title is to [illegible] suit, so returned, as an origi[illegible] 9 M 329 Where a Judge [illegible] Court of ordinary jurisdiction tried a suit of small cause nature by mistake as a regular one, the mistake did not alter the character of the suit U B R (1907) P S C Act 1

Cases—21 C 249, 27 M 478, 12 M 477, 9 M L T 372, 26 M 212 (F B); 12 C W N 16, 62 Ind Cas 108, 43 A 438, 104 Ind Cas 137, 49 A 686

CHAPTER IV.

Practice and Procedure

17. (1) "The procedure prescribed in the Code of Civil Procedure, 1908, shall, save in so far as is otherwise provided by that Code or by this Act",* be the procedure followed in a Court of Small Causes in all suits cog[illegible] passed *exparte* or f[illegible] his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct

Application of the Code of Civil Procedure

(2) Where a person has become liable as surety under the proviso to sub section (1), the security may be realized in manner provided by section 145 " of the Code of Civil Procedure, 1908†.

Notes—An application under this section, cannot be heard before the security required by the section is furnished 7 M L T 308=6 Ind Cas 400, 9 Bom. L. R 883, 2 N L R 23, 35 Ind Cas 625 An *exparte* decree was passed by the Small Cause Court at X and transferred for execution to Court Z. The judgment-debtor paid the decretal amount into Court Z on 3rd June 1908, and applied to the Court at X on the 16th June 1908 for setting aside the decree against him *Held* that the payment into the Court Z, was no bar to the application made to the Court X, and must be treated as a compliance with the rule laid down in the section 54 P R 1910=6 Ind Cas 915=141 P L R 1910 Deposit of the decretal amount or tender of sufficient security for payment thereof is a condition precedent to the grant of a new trial 5 P R 1894, 6 Ind Cas 154, 28 A 470, 35 Ind Cas 925, 38 Ind Cas 139 The time may be extended by the Court at its discretion. 108 P R. 1894, 3 O C 296 The defect is not cured by subsequently depositing the amount. 28 A. 473. Deposit

* Substituted by Act I of 1926
† Added by Act I of 1926.

of the decretal amount less cost ... Cas 242, see also ... missed for default ... The requirements ... J 433; 50 Ind Cas ... the words 'amount due ... 'the amount due under the decree when it wa... under the decree at the date when the application ... R 1933 All 13=1932 A L J 260 Under sec... security bond is no security and the Court has no ... aside an *exparte* decree and ordering a new trial ... L T 13

ply with this section 14 Ind ... *te*" does not include cases dis... R 17 (F B), 20 A L J 209 ... A L J 315, but see 37 M L ... under the de...

Trial of suits by Registrar

18 (1) Suits cognizable by the Registrar under section 12, sub-sections (3) and (4) shall be tried by him and decrees passed therein shall be executed by him in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively

(2) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar

Admission return and rejection of plaints by Registrar

19 (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it

(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him

Provided that where a party applies for the return or rejection or the admission of a plaint under this sub section, and his application is not made at the first sitting of the Judge after the date on which the Registrar admitted, or returned or rejected the plaint, the Judge shall dismiss the application unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting

Passing of decrees by Registrar on confession

20 (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar and admits the plaintiff's claim the Registrar may, if the Judge is absent and an Add... ...d or, having been app... ...admission, a decree w... ...udge

(2) ... ...r sub section (1) the ... ...ation for review of judgment, and re hear ... the same grounds and in the same manner ... himself

Execution of decrees by Registrar

21. (1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he ... with respect to decrees or orders ma... Additional Judge make any orders in ... of decrees and orders made by the Co... that Court for execution which the Judge might make under this Act

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), or the Additional Judge, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by

the Judge under this sub section, may, of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order

(3) The period of fifteen days mentioned in sub section (2) shall be computed in accordance with the prov ions of the Indian Limitation Act, 1877, as though the application of the party were an application for review of judgment

Adjournment of cases by chief ministerial officer

22 When the Judge of a Court of Small Causes is absent and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding and fix a day for the further hearing thereof

Return of plaints in suits involving questions of title

23 (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title

(2) When a Court returns a plaint under sub section (1) it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1877, be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction

Notes—An order under s 23 returning a plaint to be presented to the Civil Court, is final and confers jurisdiction on the latter 23 C 425, 29 M 329, 9 M L T 372, 10 M L J 313 When a plaint is returned, the nature of the suit is not altered 85 Ind Cas 1002, 5 C W N 687, 87 Ind Cas 659=1925 All 8?1, 26 M L J 225 In such cases a second appeal was precluded by s 586 of Civil Pro Code 1882 6 C W N 687, 1 M L J 166, 39 A 101=37 Ind Cas 92, 10 M L T 500=12 Ind Cas 957, but see 64 Ind Cas 436, 45 Ind Cas 645, 43 P R 1902 The word 'may' in this section is not mandatory A W N 1889 4 A cause is nonetheless a cause cognizable by a Court of Small Causes because that Court exercised the discretion conferred on it by this section 20 A 480=A W N 1898 129, see also 4 L W 245=36 Ind Cas ?02, 65 Ind Cas 93 When a Small Cause Court refers a case to the regular Civil Court under this section the regular Civil Court has no jurisdiction to refuse to entertain the plaint 18 Ind Cas 325=18 C W N 380 A Judge acting under this section can cause a suit to be transferred to his file as an ordinary Judge at a very early stage after the plaint has been examined 15 Bom L R 1036 The effect of an order under this section is to remove any bar which might otherwise exist by reason of the provisions of s 16 of the Act to a trial of the suit by a Court of ordinary civil jurisdiction 12 A L J 334 Section [illegible] cases in which [illegible] is so intricate [illegible] evidence is re[illegible] 30=1 Pat. L J 4[illegible] return a plaint to be presented in the Court having jurisdiction to determine the question of title raised in the suit, even though the question is alleged to be *res judicata* by reason of a previous suit between the plaintiff and the lessor of the defendant 48 Ind Cas 612

Cases—27 Ind Cas 751, 57 Ind Cas 602, 3 Lah L J 335 2 Pat L T ?17, 60 Ind Cas 145

(*a*) the nature of the suits cognizable by Courts of Small Causes,

(*b*) the exclusion of the jurisdiction of other Courts in those suits,

(*c*) the practice and procedure of Courts of Small Causes,

(*d*) appeal from certain orders of those Courts and revision of cases decided by them and

(*e*) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested, by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts

(2) Nothing in sub section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction

Notes —The terms of sub-section (2) of the Provincial Small Causes Courts Act are imperative and provide that nothing in the previous sub section applies to suits Instituted or proceedings commenced in Small Cause Courts before the date on which they were invested with that jurisdiction 227 P L R 1911, see also 5 Bom L R 1008=28 B 244 An appeal against the decree of such a Judge is competent 9 Ind Cas 264, 28 B 244, 25 Bom L R 516, 49 Ind Cas 208=4 Pat L J. 13, 54 Ind Cas 428=18 A L J 89 Where a suit for recovery of Rs 157 was instituted in a Small Causes Court invested with jurisdiction to try suits up to Rs 100 only, that Court cannot try the suit though it is subsequently and at the time of the trial invested with jurisdiction up to Rs 250 20 A L J 257=66 Ind Cas 116=1922 All 112 Sub section (2) is applicable where the same officer who originally entertained the suit is subsequently vested with Small Cause Courts powers 45 C L J 218

33 A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts

Application of Act and Code to Court so invested as to two Courts

Notes—Where a Judge [illegible] Small Causes Court and also over a [illegible] istake as a [illegible] An appeal [illegible] dure Code [illegible] U B R (1907) Pro Sm 1, see also 5 Bom L R 398

34 Notwithstanding anything in the last two foregoing sections,—

Modification of Code as so applied

(*a*) when in exercise of the jurisdiction of a Court of Small Causes a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(*b*) When a Court in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,

the documents mentioned in section 224 of the Code of Civil Procedure shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent

35 (1) Where a Court of Small Causes or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case whether before or after decree, which, if the Court had not ceased to

Continuance of proceedings of abolished Courts

may be had in the Court which, isen were about to be instituted,

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure as extended to Courts of Small Causes or in any other enactment for the time being in force

Notes —The expression "Court of Small Causes' in s 25, Civil Procedure Code, 1882 must be held to be a Court of Small Causes constituted under the Provincial Small Causes Courts Act 1887, and not to include a Court of Small Causes under another Act Where a Munsiff vested with Small Causes powers is transferred and

the decree holder wishing to execute the decree against the defendant must apply for execution under s 35 of the Act to that Court in which the suit if instituted at the time of the application should to instituted 30 M 387

36 [*Repealed by Act 9 of 1908*]

Publication of certain orders

37. All orders required by this Act to be made in writing by the Local Government shall be published in the official Gazette

THE FIRST SCHEDULE

ENACTMENTS REPEALED

[*Repealed by Act XII of 1891*]

THE SECOND SCHEDULE

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES

(*See section 15*)

(1) *A suit concerning an act or order purporting to be done or made by the* Governor General in Council or a Local Government, or by the Governor General or a Governor, or by a Member of the Council of the Governor General or of the Governor of Madras, 'Bombay or Fort William in Bengal,' * in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or a Local Government ;

Notes —The Punjab Govt imposed a professional tax in a notified area on a *munshi* who paid it under protest and brought a suit on the Small Cause Court for recovery of the same *Held* that the suit was not one concerning an act purporting to be done by any person by order of a Local Government and was not excluded therefore from the jurisdiction of a Court of Small Causes 14 P L R 1918=74 P W R 1018

(2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court, or of a judicial officer acting in the execution of his office,

Notes —*Vide* 24 A L J 856=98 Ind Cas 976=A I R 1927 All 27, A I R 1933 Oudh 146.

* The words within quotations have been substituted by Act X of 1914

(3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office,

Notes—A suit for damages
India in consequence of act done
article 50 C 403 This article
by an officer of Government A
regarded as such an act 23 M L J 732—12 M L T 297 A suit for damages for non delivery of goods against a Government Railway Company does not fall with
17 C 29 A Karnam in a Zamindari is not an
An order given by a Commissariat Official
is not an official act such as is contemplated
by this article 91 P L R 1902

(4) a suit for the possession of immovable property or for the recovery of an interest in such property

of house and to obtain posses
5 is not a law suit but is an
Suit for price of ornaments

y,
rty for the foreclosure of the mortgage or for the sale of the property or by a mortgagor of immovable property for the redemption of the mortgage,

Notes—A I R 1926 Mad 633=51 M L J 159

(7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immovable property,

Notes—A claim for *Moruppu* does not fall within the prohibition in art 7 of the Act as a claim for apportionment of rent 17 M L J 487 A suit claiming rent at a higher rate on failure to quit on the date mentioned does not fall under this article 9 N L R 72=19 Ind Cas 858 A suit claiming enhanced *Kathubadi* on the ground that the defendant has committed default in the payment of the money

assessment, enhancement abatement or apportionment of rent are excluded from the cognizance by the Court of Small Causes by this article 98 Ind Cas 882

(8) a suit for the recovery of rent, other than house rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto,

Notes—A suit for recovery of ground rent of a shop does not lie in a Small Causes Court 1 P R 1894, see also 15 Ind Cas 32=9 A L J 776 A suit by assignee of rent against a tenant is a suit to recover rent, 4 C W N 10 Sum due under a co
W N 994
and other
C 677 A
L J 402
for rent
rent wrongfully taken by a trespasser, art 8 of the Act does not apply 3 P L R 1903 The rent of a masonry outlet is not rent 164 P R 188

(9) a suit concerning the liability of land to be assessed to land revenue,

(10) A suit to restrain waste,

(11) a suit for the determination or enforcement of any other right to or interest in immovable property,

Notes—This article does not co
vendor the purchase money which he
has been ejected 4 C W N 63;
dants wrongfully cutting and carr
belonging to plaintiff is cognizable b

L R 1901 So also a suit brought by an execution purchaser of immovable pro perty for recovery
has no saleable ii
Bom L R 369
Court 21 M 243
is no dispute as
Court of Small Causes 5 Ind Cas 322 A suit by the lessee of the lac produce of a village to recover the value of lac illegally removed during the currency of the lease is cognizable by a Court of Small Causes 50 Ind Cas 629 A Small Causes Court has no jurisdiction to decide question of title, and any decision thereon is not a binding adjudication 78 Ind Cas 872

(12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office

(13) a suit to enforce payment of the allowance or fees respectively called *malikana* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property or in hereditary office or in a shrine or other religious institution

Notes —A suit by a lessee of a Government ferry for recovery of tolls falls under this section 48 P R 1897, 80 P R 1898 11 A L J 133=35 A 156 The article must be limited to suits by persons entitled to the dues against those by whom they are payable, and can not be extended to suits to recover the dues from persons to whom they have been wrongfully paid 81 P R 1889 A suit to recover share of voluntary payments made to a religious association is not cognizable on the Small Cause side 28 M 262 A suit to recover landcess by the zemindar from the *inamdar* is one of a Small Cause nature, and no second appeal lies in such a suit 10 M L T 167=21 M L J 819=11 Ind Cas 750 Where money is payable annually to the plaintiff he must make out that the suit comes within one of the articles of the second Schedule 16 Ind Cas 117=1912 M W N 537 A suit by a lessee of a ferry to levy a toll falls under this article 11 A L J 133=33 A 156 Where the plaintiff sues for rise of allowance along with the emoluments pertaining to his office of *pujori* of a temple, the whole suit is triable as a regular suit by the District Munsiff 2 M W N 1911, 589 The cesses and dues referred to in art 13 are cesses and dues which are claimed *pua* cesses or dues and apparently from the persons who are liable to pay them 26A 358 A suit for the recovery by an *inamdar* of sums payable by a *Khatedar* in respect of certain immovable property held by him under the *inamdar* as his superior holder is not cognizable by a Court of Small Causes 18 Bom L R 746 This article relates primarily to dues claimed from the person liable to pay them as such but does not cover a suit against a person who has improperly collected the dues from those liable to pay the same 12 N L R 47=32 Ind Cas 998

(14) a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act, 1894,* the whole or any part of the compensation,

(15) a suit for the specific performance or rescission of a contract,

Notes —A suit
as due upon a bo
S C 3 A suit to
contract and is ex
22 C W N 66
for a usufructuary
Ind Cas 161 A suit for the specific performance of an award is not a suit for specific performance of a contract 49 Ind Cas 62 A suit for the return of an article lent by the plaintiff to the defendant or, in the alternative for compensation is not cognizable by a Court of Small Causes 56 Ind Cas 877 Suit for unpaid premium under completed lease is not one for specific performance A I R 1933 All 147

(16) a suit for the rectification or cancellation of an instrument;

(17) a suit to obtain an injunction

(18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution,

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* The reference to Act X of 1870 has been altered in accorda th Act I of 1894, s 2 (3)

Notes—A suit by a dismissed guardian against minor for money spent by him for minor's use falls under this article 141 P. L R 1903=51 P R 1903 *A suit for* damages against previous manager of temple falls under this article 21 M 245. A suit by a tru ... defendant to pay a specified sum to plaintiff ...
suit to recover ...
24A 208=A W ...
relating to a trust 20 M L J 146=5 Ind Cas 912 A suit by the plaintiff by the *trustees for salaries is a suit relating to trust* 26 M 368 Suit by school master for pension from the school master's pension fund falls under this section 25 Ind Cas 41

... ng a suit instituted under section 283 or s ...

... the recovery of a balance alleged to ... the fact that a ... added did not ... =3 A L J 23 =28 A 293

(20) a suit instituted under section 283 or section 332 of the Code of Civil Procedure ;

... ery ... ale, ... y a guardian ,

(22) a suit for property which the plaintiff has conveyed while insane ,

(23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity ,

Notes— ... an award, wh ... tance 6 S I ... things partiti ... oney pay- ... =18 A L ...

Notes—A suit to enforce an award is not the same as a suit to enforce a contract , *and the Small Causes Court has jurisdiction to take cognizance of such a suit* 25 Ind Cas 826

(25) a suit upon a foreign judgment as defined in the Code of Civil Procedure or upon a judgment obtained in British India ,

... der section 295 ... 321, or ... 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets ,

(28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate ,

Notes—A suit for recovery of ornaments or their value by right of inheritance ...

... against wrong-doers. 19 C W N 614=27 Ind Cas 773 This article contemplates a suit between rival claimants 80 Ind Cas 409

(29) a suit—

(*a*) for a dissolution of partnership or for the winding-up of the business of a partnership after its dissolution ;

(b) for an account of partnership transactions , or

(c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents ,

Notes —A suit for profits out of a partnership business in connection with an agricultural transaction is governed by this article 92 P R 1889

Clause (b) —Suit for recovery of specific sum advanced for a partnership and for profits is cognizable by Small Causes Court 51 Ind Cas 435

[illegible]

(30) a suit for an account of property and for its due administration under decree ;

(31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits on immovable property belonging to the plaintiff which have been wrongfully received by the defendant ,

Notes —[illegible]

of the Court of Small Causes 7 Bom L R 741=30 B 147 A suit to recover a sum alleged to be due under a settlement of account is not a suit for account A suit for an account is a special form of suit A special process is required to take an account 28 M 394 , see also 14 Ind Cas 786=5 N L R 36 , 41 Ind Cas 46=109 P W R 1917

A suit for value of crops taken out forcibly does not fall within the purview of this article 35 M 726=11 Ind Cas 31 , see also 15 M 298 , 39 P R 1901 A suit for recovery of money due to the plaintiff, under the terms of a conveyance of immovable property executed in his favour by the defendant is not a suit for recovery of profits of immovable property wrongfully received by the defendant within the meaning of the article 7 Ind Cas 434=12 C L J 599 A suit for rent by a divided co-parcener against his co parcener and the tenant, is [illegible] M 184 A right to receive rents or fees [illegible] occupation during a fair of a piece of land [illegible] profits of immovable property belonging [illegible] N 1901, 128 A suit for a definite sum of profits of immovable property is not cognizable by a Court of Small Causes although it involves no rendition of accounts 8 Ind Cas 270 A suit to recover damages on account of the alleged wrongful eviction of the plaintiff from immovable property is not a suit falling under this article A W N 1898, 10 A suit for mesne profits for the plaintiff being kept out of possession of property to which he was entitled is not a suit for accounts, and does not fall within the purview of art. 31 84 P L R 1902 (F B)=35 P R 1902 , see also 7 Ind Cas 390=8 M L T 281 ; 24 M 118 No second appeal lies from a suit for mesne profits where the value of the subject matter is less than Rs 500 23 C 884 (F B) A suit by landlord for damages for breach of covenant not to cut and carry away trees is cognizable by Small Causes Court 26 M 176=12 M L J 264 Where the plaint does not call upon any of the defendants to render accounts, the suit is not for an account M W N 1912, 36=13 Ind Cas 159 This article applies to cases where the relationship of parties is such that one of them is bound to render accounts to the other 24 M L J 693=14 M L T 46 Suit by principal against agent for specific items of money credited to himself by the agent is cognizable by the Small Causes Court. 19 M L J 113 A suit for damages for keeping the plaintiff out of possession of the mortgaged property

where he has already paid the mortgage money falls under this section 11 A L J. 238=19 Ind Cas 427. A suit against an agent for the value of goods received and not accounted for by him is not a suit for account and is cognizable by the Court of Small Causes 24 Ind Cas 764 This article governs all cases where the relationship of the parties is such that one of them is bound to render accounts to the other 3 L W. 143=(1916) M W N 169=33 Ind Cas 16 A suit for recovery of a sum of money on the ground that a certain tank was the joint property and that the defendant caught and appropriated the entire fish from the tank for his own benefit being a suit of Small Cause nature, no second appeal lies 31 Ind Cas 797 A suit for the recovery of the mesne profits from which the plaintiff has been wrongfully dispossessed is not a suit of a Small Cause nature 40 A 142=16 A L J 55=44 Ind Cas 689 A suit for an ascertain

under Art

423=(1918) F

looked into

24 M

is a half

a Small

ct with-

fits 66

dgment

does not fall under this article each of covenant for title is not excluded from the cognisance of the Small Causes Court 15 L W 35=(1922) Mad 300

(32) a suit for general average loss or for salvage ,

Notes —A suit for services rendered in saving cargo from a leaky boat is not a suit for salvage and is not excluded from the cognizance of a Court of Small Causes under th

(33)

(34) y premium paid under any such policy ;

(35) a suit for compensation—

(a) for loss occasioned by the death of a person caused by actionable wrong ,

(b) for wrongful arrest, restraint or confinement ,

(c) for malicious prosecution ,

(d) for libel ,

(e) for slander ,

(f) for adultery or seduction ,

an

re or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV of that Code , or

(l) for injury to the person in any case not specified in the foregoing sub clauses of this clause ,

Compensation —The word "compensation" in this article has the same meaning as it has in s 73 of the Contract Act 132 P R 1889

Clause (c) —A suit for damages for malicious prosecution, whether the claim is for money as a solve to injured feelings or as payment for actual loss caused to the plaintiff falls under this section 30 P R 1889

Clause (d) —To cause loss of reputation is to inflict a personal wrong of a serious description, a suit for compensation for which falls under clause (d) or clause (e) of this article 12 N. L. R 7=32 Ind Cas 236

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* The words within quotations have been added by Act 6 of 1914

within this clause 2 S L R 31, but see A I R 1933 Rang 198

Clause (h) —1 Lah 574, 58 Ind Cas 167

Clause (i) —A suit for compensation for diversion of water course falls under this clause 13 P R 1906=18 P L R 1907, 41 Ind Cas 142

Clause (ii) —*Vide* 21 C W N 1109, 45 Ind Cas 15, 23 O C 352, 59 Ind Cas 593, 67 Ind Cas 305, 65 Ind Cas 344

paid under distra nt is not 5 A suit merely for the 16 M L J 353 A suit 11 A L J 99=18 Ind Cas 695 A suit by the judgment debtor for damages is maintainable in a Small Cause Court 1 Bur L J 207

Clause (l) —A suit for recovering damages for assault falls under this article 14 Bom L R 323=36 B 443=15 Ind Cas 505 A suit for compensation for malicious

for a divorce,

(38) a suit relating to maintenance,

Notes —This article refers to a suit which both in form and in substance is a suit for maintenance A W N 1907 137=1907 A L J 697 A suit for arrears of maintenance falls under this clause 123 P R 1889, 26 M L T 245 A Small Cause Court has jurisdiction to hear a suit for contribution in respect of sums paid by the representative of a judgment debtor to satisfy a decree passed against the latter and his three brothers for maintenance which however was not made a charge on property 14 M L J 480 A suit to recover the value of paddy deliverable by one brother to another under the terms of a partition deed for the maintenance of their mother is not a suit relating to maintenance' within the meaning of this article 22 Ind Cas 39 Where the suit is not by a maintenance holder for a maintenance but is based upon a contract it does not fall under this article 21 L W 103=27 Ind Cas 824 but see 32 Ind Cas 544, 38 Ind Cas 209

(39) a suit for arrears of land revenue village expenses or other sums payable to the representative of a village community or to his heir or other successor in title,

Notes —A additional rates is a suit of the A suit by the *Chaudhuris* of a have been wrongfully received 4 P R 1889

of a village commun ty or by his heir or other successor in title after payment of land revenue village expenses and other sums,

t property in respect of a payment a manager of joint property or a yment made by him on account of

Notes —A suit for contribution arising out of satisfaction of a joint decree for costs does not fall under this article A W N 1906, 6=3 A L J 7=23 A 292, see also 4 A

is not exclud-

to a suit for

a co-sharer

30 N 212=17 M L J 376, 14 Ind Cas 735 A suit by one of several joint under proprietors who satisfied the decree for arrears of rent passed jointly against them for contribution against the other joint under proprietors, is not a suit exempted from jurisdiction of a Court of Small Causes 24 Ind Cas 28, see also 24 Ind Cas 259

* Certain words repealed by Act X of 1914 have been omitted

20 C L J 196=18 C W N 1308 A suit by some of several persons, bound by a common liability, who have discharged the joint obligation to compel their co sharers to make good their shares falls within the scope of Art 41 of the Act 20 C L J 200, see also 13 A L J 452=28 Ind Cas 587, 40 A 135=16 A L J 44=45 Ind Cas 560 A suit for contribution is not exempted from the cognizance of a Court of Small Causes 5 O L J 109=45 Ind Cas 236 A suit for contribution by one tort feasor against his joint tort feasor for a sum below Rs 500 is a suit of Small Cause nature, and no second appeal lies against a decision in such a case 62 Ind Cas 504, see also 62 Ind Cas 651 A suit for the recovery of money under ss 69 and 79 of the Contract Act does not fall within art 41 and is therefore not excluded from the cognizance of a Small Cause Court 3 Pat L T 122 The word "joint" in this article does not refer to the property of the joint Hindu family, as the same is separately mentioned in the same article 99 Ind Cas 518

(42) a suit by one of the several joint mortgagors of immovable property for contribution in respect of money paid by him for the redemption of the mortgaged property,

Notes —A suit against wrong doers for recovery of money illegally obtained is not a suit for contribution and Small Cause Court has jurisdiction to entertain it 13 A L J 632=29 Ind Cas 245 Where the suit in substance is a suit by one of several joint mortgagors for contribution in respect of money paid by him for redemption of the mortgaged property the Small Cause Court has no jurisdiction to entertain it 13 A L J 694=29 Ind Cas 247

(43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue authority on account of an arrear of land revenue or of a demand re... ...ble ... an arrear of land revenue,

... erty obtained by an act which is or, save for the ... lian Penal Code would be an offence punishable ... ode'*

Notes —If in a Small Cause claim the plaintiff accuses the defendant of conduct amounting to a criminal misappropriation the jurisdiction of the Small Cause Court to try the suit is barred by art 43 A 55 Ind Cas 378

(44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force

Notes —A suit by a tenant against his landlord for refund of the rent paid by him in advance for land rented by him for a fixed term on the ground of his ejectment therefore such term is cognizable by a Small Cause Court the same not being barred by any of the clauses of ss 77 of Punjab Tenancy Act 172 P R 1908

THE PUBLIC SERVANTS (INQUIRIES) ACT, 1850.

ACT NO XXXVII OF 1850

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON 1ST NOVEMBER, 1850

For Regulating Inquiries into the behaviour of Public Servants

WHEREAS it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable [from their appointments]† without the sanction ... uniform throughout the territories under ... icted as follows —

Preamble

... *Act XIV of 1870*

2 Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of 'the Government not removable from h s ap... the sanction of ... the substance of the imputations to be drawn ... shall order a formal and public enquiry to be

Articles of charge to be drawn out for public enquiry into conduct of certain public servants

* The words within quotations have been added by Act 6 of 1914
† Substituted by Act I of 1897

Authorities to whom inquiry may be committed

3 The enquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government, commissioners for the purpose notice of which commission shall be given to the person accused ten days at least before the beginning of the enquiry

Notice to accused

Conduct of Government prosecution

4 When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf

Charge by accuser to be written and verified

Penalty for false accusation

Institution of inquiry by Government

5. When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser, and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury, but this enactment shall not be construed to prevent the Government from instituting any enquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid

Security from accuser left by Government to prosecute

6 Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter charge or action which may be afterwards brought against him for malicious prosecution or perjury or subornation of perjury, as the case may be

Power of Government to abandon prosecution and to allow accuser to continue it

7 At any subsequent stage of the proceedings, the Government may if it think fit, abandon the prosecution, and in such case may, if it think fit on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned

Powers of Commissioners

Their protection

Service of their process

Powers of Court, etc, acting under commission

8 The commissioners shall have the same power of punishing contempts and obstructions to their proceedings as is given to the Civil and Criminal Courts by "the Code of Criminal Procedure 1898 * and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the Zila and City Judges except that all process to cause the attendance of witnesses or other compulsory process, shall be served through and executed by, the Zila or City Judge in whose jurisdiction the witness or other person resides on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature there When the commission has been issued to a Court or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission

* Substituted by Act X of 1914

9 All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed,

Penalty for disobedience to process

10 A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry

Copy of charge and list to be furnished to accused

11 At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty' or "not guilty" to each of them, which pleas shall be forthwith recorded with the articles of charge If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge

Procedure at beginning of inquiry

Non appearance of accused and admission of charge

12 The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved, his address shall not be recorded

Prosecutor's right of address

13 The oral and documentary evidence for the prosecution shall then be exhibited the witnesses shall be examined by, or on behalf of the prosecutor and may be cross examined by or on behalf of the person accused The prosecutor shall be entitled to re examine the witnesses on any points on which they have been cross examined, but not on any new matter without the leave of the commissioners, who also may put such questions as they think fit

Evidence for prosecution and examination of witnesses

Re examination by prosecutor

14 If it shall appear necessary before the close of the case for the procecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence, and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days before the exhibition of such new evidence, exclusive of the day of adjournment and of the day to which the proceedings are adjourned

Power to admit or call for new evidence for prosecution

Accused's right to adjournment

15 When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer, If made orally, it shall not be recorded; if made in writing, it shall be recorded after being openly read, and in that case a copy shall be given at the same time to the prosecutor

Defence of accused

To be recorded only when written

16 The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution.

Evidence for defence, and examination of witnesses.

17 [*Examination of witnesses and evidence by prosecutor—Repealed by the Repealing Act* (XII of 1876)]

Notes of oral evidence

18 The commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings

Inquiry when closed with defence

Prosecutor when entitled to reply and give evidence

Accused not entitled to adjournment

19 If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings although such new evidence were not included in the list furnished to him

Power to require amendment of charge and to adjourn

Reasons for refusing adjournment to be recorded

20 When the commissioners shall be of opinion that the articles of charge or any of them, are not drawn with sufficient clearness and precision the commissioners may in their discretion require the same to be amended and may thereupon on the application of the person accused adjourn the inquiry for a reasonable time The commissioners may also if they think fit adjourn the inquiry from time to time on the application of either the prosecutor or the person accused, on the ground of the sickness on unavoidable absence of any witness or other reasonable cause When such application is made and refused the commissioners shall record the application and their reasons for refusing to comply with it

Report of commissioners proceedings

21 After the close of the inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case

Power to call further evidence or explanation

Inquiry into additional articles of charge

Reference of report of special commissioners

Final orders

22 The Government, on consideration of the report of the Commissioners, may order them to take further evidence or give further explanation of their opinions It may also order additional articles of charge to be framed in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges When special commissioners have been appointed, the Government may also, if it thinks fit refer the report of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case, and will finally pass such orders thereon as appear just and consistent with its powers in such cases

Powers of Government under this Act by whom exerciseable

23 * The powers of the Government under this Act may in all cases be exercised by the Governor General in Council, and when the person accused can be removed from his appointment by the Local Government, those powers may also be exercised by the Local Government

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* Substituted by Act of 1897

24 Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sadr Amins or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the Government shall think it expedient

Saving of enactments as to dismissal of certain officers

Commission under Act for their trial

25 Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act

Saving of power of removal without inquiry under Act

THE PUBLIC SUITS VALIDATION ACT, 1932

ACT No XI OF 1932

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 8TH APRIL, 1932

An Act to validate certain suits relating to public matters

WHEREAS it is expedient to validate certain suits relating to public matters which may be or have been held to be invalid by reason of the previous sanction of the Local Government in respect thereof not having been obtained as required by section 93 of the Code of Civil Procedure, 1908,* It is hereby enacted as follows —

Notes —Sections 91 a [illegible] the Advocate General to instit [illegible] suits relating to public matters [illegible] is no Advocate General or for [illegible] Code provides that these power [illegible] the previous sanction of the Local Government by the Collector or by such officer as the [illegible] Local Governments have taken the [illegible] sanction to the [illegible] of each particular [illegible] nt case held that [illegible] meantime dismissed whether in the Court of first instance or in the Court of appeal on the ground of the absence of the requisite sanction —*Statement of Objects and Reasons*

1 (1) This Act may be called the Public Suits Validation Act 1932

Short title and extent

(2) It extends to all parts of British India to which sections 91, 92 and 93 of the Code of Civil Procedure, 1908,* extend

2 Where a suit relating to any of the public matters specified in sections 91 and 92 of the Code of Civil Procedure, 1908,* is pending at the commencement of this Act, the institution of such suit shall not be deemed to be invalid on the ground that the previous sanction of the Local Government in respect of such suit has not been obtained as required by section 93 of that Code

Validation of certain pending public suits

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* V of 1908

Explanation—For the purpose of this section a suit pending at the commencement of this Act includes a suit in respect of which an appeal lies or is pending at the commencement of this Act

Restoration of certain dismissed public suits

3 Where any suit relating to any such public matter has, after the 30th day of November, 1931, and before the commencement of this Act, been dismissed by a Court of first instance solely on the ground that the sanction of the Local Government in respect of such suit has not been obtained as required by section 93 of the Code of Civil Procedure, 1908,* the Court shall, on application made within six months from the commencement of this Act, make an order setting aside its decree and shall proceed with the suit

Retrial of certain appeals relating to public suits

4 Where, in any appeal arising from a suit relating to any such public matter, a decree has been passed after the 30th day of November, 1931, and before the commencement of this Act, dismissing the appeal or dismissing the suit from which the appeal arose, solely on the ground that the previous sanction of the Local Government in respect of the suit had not been obtained as required by section 93 of the Code of Civil Procedure, 1908,* the Appellate Court shall, on application made within six months from the commencement of this Act, make an order setting aside its decree and shall proceed with the appeal

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THE INDIAN RAILWAYS ACT, 1890

ACT NO IX OF 1890

RECEIVED THE G G S ASSENT ON THE 21ST MARCH, 1890

An Act to consolidate, amend and add to the law relating to Railways in India

WHEREAS it is expedient to consolidate, amend and add to the law relating to railways in India, It is hereby enacted as follows —

CHAPTER I

Title, extent, and commencement

1 (1) This Act may be called the Indian Railways Act, 1890

(2) It extends to the whole of British India, inclusive † (in so far as it has been or may be extended under the provisions of the Sindh Pishin Railway Act, 1887) of British Beluchistan, and applies also to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, and to all native subjects of Her Majesty, without and beyond British India and those dominions, and

(3) It shall come into force on the first day of May, 1890

Notes —A resolution which appeared in the *Gazette of India* is not a rule 9 Ind Cas 1011=36 P R 1911 A railway company can prevent persons from entering in Railway premises *Vide Ibid*

Repeal

2 (1) On and from that day the enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof

(2) But all rules, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications published

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* V of 1908

† Certain words repealed by Act 13 of 1898 have been omitted

under any of those enactments, or under any enactment repealed by any of them, shall, so far as they are consistent with this Act, be deemed to have been respectively made, given, approved, conferred and published under this Act

(3) Any enactment or document referring to any of those enacments or to any enactment repealed by any of them, shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof

Definitions

3 In this Act, unless there is something repugnant in the subject or context,—

(1) "tramway" means a tramway constructed under the Indian Tramways Act, 1886, or any special Act relating to tramways

(2) "ferry" includes a bridge of boats, pontoons or rafts, a swing bridge, a flying bridge and a temporary bridge, and the approaches to, and landing places of, a ferry:

(3) "inland water" means any canal, river, lake or navigable water in British India :

(4) "railway" means a railway, or any portion of a railway for the public carriage of passengers, animals or goods, and includes—

(a) all land within the fences or other boundary marks indicating the [illegible]

[illegible] hes worked over for the purposes of, [illegible]

(c) all stations offices, warehouses, wharves, workshops, *manufactories*, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway ; and

(d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway :

(5) "railway company" includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway .

(6) "railway administration" or "administration," in the case of a railway administered by the Government or a Native State, means the manager of the railway and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company

(7) "railway servant" means any person employed by a railway administration in connection with the service of a railway :

(8) "Inspector" means an Inspector of Railways appointed under this Act :

(9) "goods" includes inanimate things of every kind :

(10) "rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks and trollies of all kinds

(11) "traffic" includes rolling stock of every description, as well as passengers, animals and goods :

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations

(13) "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods .

(14) "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses cranes and other similar matters, and of any services rendered thereat .

(15) "pass" means an authority given by a railway administration, or by an officer appointed by [illegible] the person to whom it [illegible]

(16) "ticket" [illegible] et :

(17) "maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred aud eighty grains Troy : and

(18) Collector ' means the chief officer in charge of the land revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act

Notes —Al hough s 3 cl (4) of the Railway Act is wide, staff quarters are not part of the Railway 32 Ind Cas 177 As regards the meaning of railway, *vide* 9 Ind Cas 1011=36 P R 1911

EMPLOYEE—3 Bur L J 147

CHAPTER II

INSPECTION OF RAILWAYS

Appointment and duties of inspectors

4 (1) The Governor General in Council may appoint persons by name or by virtue of their office, to be inspectors of Railways

(2) The duties of an inspector of Railways shall be—

(a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers and to report thereon to the *Governor General in Council as required by this Act*,

(b) to make such periodical or other inspections of any railway or of any rolling stock used thereon as the Governor General in Council may direct,

(c) to make inquiry under this Act into the cause of any accident on a railway,

(d) to perform such other duties as are imposed on him by this Act or any other enactment for the time being in force relating to railways

Notes —In England for the purpose of carrying out its duties the Board of Trade has power to appoint inspectors to inspect railways and to make authorised inquiries with respect to any railway or into the cause of any railway accident —*Halsbury's Laws of England* Vol 23 p 738

Powers of Inspectors

5 An Inspector shall, for the purpose of any of the duties which he is required or authorized to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and subject to the control of the Governor General in Council shall for that purpose have the following powers namely —

(a) to enter upon and inspect any railway or any rolling stock used thereon,

(b) by an order in writing under his hand addressed to the railway administration to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration

(c) to require the production of any book or document belonging to or in the possession or control of any railway administration (except a communication *between a railway company and its legal advisers) which it appears to* him to be necessary to inspect.

Notes — Every such [illegible] and inspect any railway [illegible] machinery belonging ther[illegible] or in the employment [illegible] is bound to supply answers and returns to such inquiries as the Inspector makes An Inspector may also require and enforce the production of all books papers and documents of a company which he considers necessary *Halsbury's Laws of England*, Vol 23 p 739

Facilities to be afforded to inspectors

6 Any railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act

under any of those enactments, or under any enactment repealed by any of them, shall, [illegible] been respectively [illegible]

(3) Any [illegible] to any enactment repealed by any of them, shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Definitions

3 In this Act, unless there is something repugnant in the subject or context,—

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(2) "ferry" includes a bridge of boats, pontoons or rafts, a swing bridge, a flying bridge and a temporary bridge, and the approaches to, and landing places of, a ferry:

(3) "inland water" means any canal, river, lake or navigable water in British India:

(4) "railway" means a railway, or any portion of a railway for the public carriage of passengers, animals or goods, and includes—

(*a*) all land within the fences or other boundary marks indicating the [illegible];

[illegible] -hes worked over for the purposes of, or [illegible]

(*c*) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway; and

(*d*) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway:

(5) "railway company" includes any persons, whether incorporated or not, *who are owners or lessees of a railway or parties to an agreement for working a* railway:

(6) "railway administration" or "administration," in the case of a railway administered by the Government or a Native State, means the manager of the railway and includes the Government or the Native State, and, in the case of a railway administer [illegible] railway company.

(7) "railway [illegible] by a railway administration in connection [illegible]

(8) "Inspector" means an Inspector of Railways appointed under this Act:

[illegible]

gers, animals and goods:

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations.

(13) "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods:

(14) "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters, and of any services rendered thereat:

(15) "pass" me [illegible] y an officer appointed by [illegible] the person to whom it is [illegible]

(16) "ticket" includes a single ticket, a return ticket and a season ticket:

(17) "maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy; and

(18) "Collector' means the chief officer in charge of the land revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act

Notes —Al hough s 3 cl (4) of the Railway Act is wide, staff quarters are not part of the Railway 32 Ind Cas 177 As regards the meaning of railway, *vide* 9 Ind Cas 1011=36 P R 1911

EMPLOYEE—3 Bur L J 147

CHAPTER II

INSPECTION OF RAILWAYS

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(2) The duties of an inspector of Railways shall be—

(*a*) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the Governor General in Council as required by this Act ,

(*b*) to make such periodical or other inspections of any railway or of any rolling stock used thereon as the Governor General in Council may direct ,

(*c*) to make inquiry under this Act into the cause of any accident on a railway ,

(*d*) to perform such other duties as are imposed on him by this Act or any other enactment for the time being in force relating to railways

Notes —In England for the purpose of carrying out its duties the Board of Trade has power to appoint inspectors to inspect railways and to make authorised inquiries with respect to any railway or into the cause of any railway accident —*Halsbury's Laws of England* Vol 23 p 738

Powers of Inspectors

5 An Inspector shall, for the purpose of any of the duties which he is required or authorized to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and subject to the control of the Governor General in Council, shall for that purpose have the following powers, namely —

(*a*) to enter upon and inspect any railway or any rolling stock used thereon ,

(*b*) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration ,

(*c*) to require the production of any book or document belonging to or in the possession or control of any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect.

[illegible]

is bound to supply answers and re [illegible]
An Inspector may also require and [illegible]
documents of a company which he [illegible]
England, Vol 23 p 739

Facilities to be afforded to inspectors

6 Any railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act

CHAPTER III.

Construction and Maintenance of Works

Authority of railway administrations to execute all necessary works

7 (1) Subject to the provisions of this Act and, in the case of immovable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of railway company, to the provisions of any contract between the company and the Government, a railway administation may, for *the purpose of constructing a railway or the accomodation or other works* connected therewith, and notwithstanding anything in any other enactment for the time being in force,—

(*a*) make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railways or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water pipes, gas pipes or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, acqueducts, bridges, roads, "lines of railway",* ways, passages, conduits, drains, piers, cuttings and fences as the railway administration thinks proper,

(*b*) alter the course of any rivers, books, streams or watercourses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams or watercourses or any roads, streets or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the railway administration thinks proper,

(*c*) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway,

(*d*) erect and construct such houses, warehouses, offices and other buildings, and such [illegible] apparatus and other works and [illegible] proper,

(*e*) alter, [illegible] conveniences as aforesaid or any of them and substitute others in their stead, and

(*f*) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

(2) The exercise of the powers conferred on a railway administration by sub section (1) shall be subject to the control of the Governor General in Council.

[illegible] to do all acts necessary [illegible] ailway, notwithstan- [illegible] 11 Bom L R 1181 [illegible] in the execution of [illegible] is right to the flow of water to his land, but does not suggest in his plaint that the company acted beyond the powers conferred upon them by this section, is not entitled to a decree directing the Company to construct a new channel for the purposes of irrigating his land, though if he has sustained any damage as the result of the exercise of their powers [illegible] action can be maintained 2 Bom L R 357; 33 B. 565

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* Added by Act IX of 1896, s 1

Alterations of pipes, wires and drains

8 A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water or compressed air or the position of any electric wire or of any drain not being a main drain:

Provided that—

(a) when the railway administration desires to alter the position of any such pipe wire or drain, it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority or company having control over the pipe, wire or drain, or, when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is,

(b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air or electricity or the maintenance of the drainage, as the case may be

Temporary entry upon land for repairing or preventing accident

9 (1) The Governor General in Council may authorize any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the railway administration to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works as may be necessary for the purpose

(2) In case of necessity the railway administration may enter upon the lands and do the works aforesaid without having obtained the previous sanction of the Governor General in Council but in such a case shall, within seventy two hours after such entry make a report to the Governor General in Council, specifying the nature of the accident or apprehended accident, and of the works necessary to be done and the power conferred on the railway administration by this sub section shall cease and determine if the Governor General in Council, after considering the report, considers that the exerise of the power is not necessary for the public safety

Notes—Section 10 of the Railways Act can only be applicable to damage which is the result of the exercise of the powers conferred by ss 7 8 and 9 and which *can be seen 2 Bom L R 357*

Payment of compensation for damage caused by lawful exercise of powers under section 7, 8 or 9

10 (1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of the three last foregoing sections, and compensation shall be paid for any damage caused by the exercise thereof

(2) A suit shall not lie to recover such compensation but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be "with the provisions of sections 11 to 15, both inclusive, sections 18 to 34 both inclusive, and sections 53 and 54 of the Land Acquisition Act 1894 and the provisions of sections 51 and 52 of that Act, shall apply to the award of compensation *

Notes—This section can only be applicable to damage which is the result of the exercise of the powers conferred by ss 7 8 and 9 and which can be foreseen 2 Bom L R 357

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* Substituted by Act 9 of 1897, s 2

11 (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely; —

Accommodation works

(*a*) such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of, or leading to or from the railway as may, in the opinion of the Governor General in Council, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(*b*) all necessary arches tunnels culverts, drains, watercourses or other passages over or under or by the sides of the railway, of such dimensions as will, in the opinion of the Governor General in Council, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway or as nearly so as may be

(2) Subject to the other provisions of this Act, the work specified in clauses (*a*) and (*b*) of sub section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works

(3) The foregoing provisions of this section are subject to the following provisos, namely —

(*a*) a railway administration shall not be required to make any accomodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made,

(*b*) save as hereinafter in this Chapter provided, a railway administration shall not, except on the requisition of the Governor General in Council, be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic,

(*c*) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof the administration shall not be compelled to provide other accommodation for the crossing of the road or stream

(4) The Governor General in Council may appoint a time for the commencement of any work to be executed under sub section (1), and if for fourteen days next after that time, the railway administration fails to commence the work or, having commenced it fails to proceed diligently to execute it in a a sufficient manner, the Governor General, in Council may execute it and recover from the railway administration the cost incurred by him in the execution thereof

Notes —From the wording of this section it is evident that the Indian Railways Act makes it clear that the Indian Legislature intended that the opinion of the executor with reference to the sufficiency of accommodation works, should be final. 25 M 632 Under this section, the purpose for which the accommodation works are to be constructed is to convey water as freely as before from or to certain lands and the aggrieved person is the owner of these lands 2 Bom L. R 337

12 *If an owner or occupier of any land affected by a railway considers* the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the Local Government or a local authority desires to construct a public road or other work across, under or over a railway, he

Power for owner occupier or local authority to cause additional accommodation works to be made

or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorized by the Governor General in Council

Notes—Lands required for the purpose of such works are lands required for the purpose of the Railway (1868) 3 Ch App 745, (1882) 20 Ch D 323

Fences, screens, gates and bars

13 The Governor General in Council may require that, within a time to be specified in the requisition, or within such further time as he may appoint in this behalf,—

(*a*) boundary marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith,

(*b*) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway be provided or re

...ose of preventing danger to pas
...animals being frightened by
...n the railway,
...hand rails be erected or renewed
...ilway crosses a public road on

the level;

(*d*) persons be employed by a railway administration to open and shut such gates, chains or bars

Notes—These obligations to erect gates and to provide for persons to look after them, do not apply to a private railway on private property used for the owner's own purposes and not for the carriage of passengers *Matson* v *Baird*, (1878) 3 App Cas 1082

14 (1) Where a railway administration has constructed a railway across

Over and under brid...

necessary for the pub...

time as he thinks fit,

of a bridge or arch, with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as in the circumstances of the case, may appear to the Governor General in Council to be best adapted for removing or diminishing the danger arising from the level crossing

(2) *The Governor General in Council may require* as a condition of making a requisition under sub section (1), that the local authority, if any, which maintains the road, shall undertake to pay the whole of the cost to the railway administration of complying with the requisition or such portion of the cost as the Governor General in Council thinks just

Notes—'Public road' includes all roads in which the public have a legal right to use at the date when the bridge was constructed (1909) A C 138 Where the company has power to cross a road on the level such power is permissible only, and it may if it chooses, cross under or over the road by means of a bridge (1846) 10 Beav 238

Removal of trees dangerous to or obstructing the working of a railway

15 (1) In either of the following cases, namely.—

(*a*) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic

(*b*) when a tree obstructs the view of any fixed signal,

the railway administration may, with the *permission of any Magistrate, fell the*

tree or deal with it in such other manner as will in the opinion of the railway administration avert the danger or remove the obstruction as the case may be

(2) In case of emergency the power mentioned in sub-section (1) may be exercised by a railway administration without the permission of a Magistrate.

(3) Where a tree felled or otherwise dealt with under sub section (1) or sub section (2) was in existence before the railway was constructed or the signal was fixed any Magistrate may upon the application of the persons interested in the tree, award to those persons such compensation as he thinks reasonable

(4) Such an award subject, where made in a presidency town by any Magistrate other than the Chief Presidency Magistrate or, where made elsewhere by any Magistrate other than the District Magistrate to revision by the Chief Presidency Magistrate, or the District Magistrate as the case may be, shall be final

(5) A Civil Court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section

Notes—This section corresponds to s 24 of the Regulation of Railways Act, 1868 (31 & 32 Vict c 119)

CHAPTER IV

Opening of Railways.

Right to use locomotives

16 (1) A railway administration may with the previous sanction of the Governor General in Council use upon a railway locomotive engines or other motive power and rolling stock to be drawn or propelled thereby

(2) But rolling stock shall not be moved upon a railway by steam or other motive power until such general rules for the railway as may be deemed to be necessary have been made, sanctioned and published under this Act

Notes—*Vide* 14 B L R 1

Notice of intended opening of a railway

17 (1) Subject to the provisions of sub section (2), a railway administration shall, one month at least before it intends to open any railway for the public carriage of passengers give to the Governor General in Council notice in writing of its intention

(2) The Governor General in Council may, in any case, if he thinks fit, reduce the period of, or dispense with, the notice mentioned in sub section (1)

Notes—A line on the land of the company and parallel to an existing line is a "portion of a railway and can not be opened without notice *A G v Great Western Railway Co*, (1872) 7 Ch App 767

Sanction of the Government a condition precedent to the opening of a railway

18 A railway shall not ... ssengers ... an Ins ... neral in Council in this behalf, has by order sanctioned the opening thereof for that purpose

Notes—Where a company had power to make a double line and opened the down line with the sanction of the Board, it was held that the Board was not by such sanction *functus officio* and could refuse to sanction the opening of the up line *A G v Oxford etc*, (1854) 2 W R 330

Procedure in sanctioning the opening of a railway

19 (1) The sanction of the Governor General in Council under the last foregoing section ... Inspector has after ... ed in writing t ... Council—

... the railway and rolling-stock, prescribed by the Governor

(c) that the weight of rails strength of bridges general structural character of the works and the size of and maximum gross load upon the axles of any rolling stock are such as have been prescribed by the Governor General in Council ,

(d) that the railway is sufficiently supplied with rolling stock ,

(e) that general rules for the working of the railway when opened for the public carriage of passengers have been made, sanctioned and published under this Act , and

(f) that, in his opinion the railway can be opened for the public carriage of passengers without danger to the public using it

(2) If in the opinion of the Inspector the railway cannot be so opened with out danger to the public using it he shall state that opinion, together with the grounds therefor to the Governor General in Council, and the Governor General in Council may thereupon order the railway administration to postpone the opening of the railway

(3) An order under the last foregoing sub section must set forth the require ments to be complied with as a condition precedent to the opening of the rail way being sanctioned and shall direct the postponement of the opening of the railway until those requirements have been complied with or the Governor-General in Council is otherwise satisfied that the railway can be opened without danger to the public using it

(4) The sanction given under this section may be either absolute or subject to such conditions as the Governor General in Council thinks necessary for the safety of the public

(5) When sanction for the opening of a railway is given subject to condi tions and the railway administration fails to fulfil those conditions the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the Governor General in Council

Notes —The Governor General in Council is not bound by the report of the Inspector but has absolute discretion as regards passing an order under this section 4 Ch D 735 , 2 W R (1854) 330

Application of the provisions of the three last foregoing sections to material alterations of a railway

20 (1) The provisions of sections 17, 18 and 19, with respect to the opening of a railway shall extend to the opening of the works mentioned in sub section (2) when those works form part of, or are directly connected with a railway used for the public carriage of passengers and have been constructed after the inspection which preceded the first opening of the railway

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines stations junctions and crossings on the level and any alteration or re construction materially affecting the structural character of any work to which the provisions of sections 17, 18 and 19 apply or are extended by this section

Notes —In case of a material alteration, the provisions of ss 17 18 and 19 would apply *Vide* also (1872) 7 Ch App 767 , (1854) 2 W R 330

Exceptional provision

21 When an accident has occurred resulting in a temporary suspension of traffic and either the original line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication the original line and works so restored, or the temporary diversion as the case may be may in the absence of the Inspector be opended for the public carriage of passengers, subject to the following condi tions namely —

(a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and

works, or of the temporary diversion will not in his opinion be attended with danger to the public using the line and works or the diversion, and

(*b*) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the *railway*

Power to make rules with respect to the opening of railways

22 The Governor General in Council may make rules defining the cases in which and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with

Power to close an opened railway

23 (1) When after inspecting any open railway used for the public *carriage of passengers*, or any *rolling stock* used thereon an Inspector is of opinion that the use *of the railway* or of any specified rolling *stock* will be attended with danger to the public using it, he shall state that opinion together with the grounds therefor, to the Governor General in Council, and the Governor General in Council may thereupon order that the railway be closed for the public carriage of passengers or that the use of the rolling stock so specified be discontinued, or that the railway or the rolling stock so specified be used for the public carriage of passengers on such conditions only as the Governor General in Council may consider necessary for the safety of the public

(2) An order under sub section (1) must set forth the grounds on which it is founded.

Notes —*Vide A G Great Western Railway Co* (1877) 4 Ch D 735 C A

Re opening of a closed rail way

24 (1) When a railway has been closed under the last foregoing section it shall not be re opened for the public carriage of passengers until it has been inspected and its re opening sanctioned, in accordance with the provisions of this Act

(2) When the Governor General in Council has ordered under the ... specified rolling stock be discontinued, ...pector has reported that it is fit ... sanctioned its use

(3) When the Governor General in Council has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling stock those conditions shall be observed until they are withdrawn by the Governor General in Council

Delegation of powers under this Chapter to Inspectors

25 (1) The Governor General in Council may, by general or special order, authorize the discharge of any of his functions under this Chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function or attach thereto any condition which the Governor General in Council might have imposed if the sanction or order has been given by himself.

... the purposes of ... or order given

CHAPTER V

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES

Railway Commissions

Constitution of Railway Commission

26 (1) For the purposes of this Chapter the Governor General in Council shall, as occasion may in his opinion require, appoint a commission, styled a Railway Commission (in this Act referred to as the Commissioners), and consisting of one Law Commissioner and two Lay Commissioners

(2) The Commissioners shall sit at such times and in such places as the Governor General in Council appoints

(3) The Law Commissioner shall be such Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure 1882, in the place where the Commissioners are to sit as in the case of a High Court established under the Statute 24 and 25 Victoria Chapter 104 the Chief Justice 'or in the case of the Chief Court of Oudh, the Chief Judge *† may, on the request of the Governor General in Council, assign by writing under his hand

(4) The Lay Commissioners shall be appointed by the Governor General in Council, and one at least of them shall be of experience in railway business

Notes—In England the railway commission is a Court of record —*Vide* 23 *Halsbury*, p 753

Restriction of jurisdiction of Railway Commission to cases specially referred

27 The Commissioners shall take cognizance of such cases only as are referred to them by the Governor General in Council

Reference of cases to Railway Commission

28 In any of the following circumstances, namely —

(*a*) where complaint is made to the Governor General in Council of any thing done or any omission made by a railway administration in violation or contravention of any provision of this Chapter,

(*b*) where any difference which is under the provisions of any agreement required or authorized to be referred to arbitration arises between railway adm[illegible] the Governor General in [illegible]

[illegible] between railway administrations or one to which a railway administration is a party, arises and the parties thereto apply to the Governor General in Council to have it referred to the Commissioners,

the Governor General in Council may, if he thinks fit, refer the case to the Commissioners for decision

Constitution of Railway Commission in session

29 The three Commissioners shall attend at the hearing of any case referred to them for decision under this Chapter and the Law Commissioner shall preside at the hearing

Powers of Railway Commission

30 (1) In hearing any such case the Commissioners shall have the powers which may be exercised in the hearing of an original civil suit by a High Court

(2) The decision shall if the Commissioners differ in opinion be in accordance with the opinion of the majority and the final order in the case shall be by way of injunction and not otherwise

(3) At the hearing the Commissioners may permit any party to appear before them either by himself or by any legal practitioner entitled to practise in any High Court

Appeals from orders of Railway Commission

31 (1) An appeal shall not lie from any order of the Commissioners upon any question of fact on which two of the Commissioners are agreed

"(2) Subject to provisions of sub section (1) an appeal shall lie from an order of the Commissioners to the High Court of which the Law Commissioner was a member ‡

* Inserted by Act 32 of 19?5
† Certain words after this repealed by Act II of 19?3 have been omitted
‡ Sub-section 2 of section 31 has been substituted by Act 18 of 1919

(3) Such an appeal must be presented within six months from the date of the order appealed from, and shall be heard by a bench of as many Judges, not being fewer than three as the High Court may by rule prescribe

(4) In the hearing of the appeal the High Court shall, subject to the other provisions of this Chapter, have all the powers which it has as an Appellate Court under the Code of Civil Procedure and may make any order which the Commissioners could have made

Notes —The appellate Court can award cost of appeal But it cannot award cost for proceeding before the Commissioners *Mansion House etc* (1895) 2 Q B 141 C A

Operation of orders of Railway Commission

32 Notwithstanding any appeal to the High Court from an order of the Commissioners the order shall, unless the Commissioners or the majority of them see fit to suspend it, continue in operation until it is reversed or varied by that Court

Assessors

33 (1) The Commissioners in the exercise of their jurisdiction under this Chapter may, from time to time, with the general or special sanction of the Governor General in Council call in one or more persons of engineering or other technical knowledge to act as assessors

(2) There shall be paid to such persons such remuneration as the Governor General in Council upon the recommendation of the Commissioners may direct

Notes —9 A W N 139

Power of the Governor General in Council to make rules for the purposes of this Chapter

34 The Governor General in Council may make rules regulating proceedings before the Commissioners and enabling the Commissioners to carry into effect the provisions of this Chapter, and prescribing fees to be taken in relation to proceedings before the Commissioners.

Costs of proceedings under this Chapter

35 The costs of and incidental to any proceedings before the Commissioners or the High Court under this Chapter shall be in the discretion of the Commissioners or the High Court, as the case may be, and the payment of costs awarded by the Commissioners may be enforced by the Court of which the Law Commissioner was a Judge as if the payment had been ordered by a decree of a High Court

Notes —The Commissioners have discretion in awarding cost (1892) 8 Ry & Can Tr Cas 53; 13 Ry & Can Tr Cas 335

Execution of order of Railway Commission and High Court

36 (1) The Court of which the Law Commissioner was a Judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners or on appeal before the High Court, or of the representative of any such person, that an injunction made under this Chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined order such party to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment.

(2) The payment of such sum may be enforced by the Court which made [illegible], and the Court may [illegible] o the person making

[illegible], *vide* 3 Ry & Can

Evidence of documents

37 A document purporting to be signed by the Commissioners, or any of them shall be received in evidence without proof of the signature, and shall, until the contrary is proved, be deemed to have been so signed and to have been duly executed or issued by the Commissioners

Notes.—*Vide* s 30 of the Regulation of Railways Act, 1873 (51 & 52 Vict, c 25) s 5 (2)

Submission to the Governor General in Council of special reports by Railway Commission

38 The Commissioners shall, as soon as may be after the disposal of each case referred to them, submit to the Governor General in Council a special report on the case, and the Governor General in Council shall cause the report to be published in such manner as he thinks fit for the information of persons interested in the subject matter thereof

Dissolution of Railway Commission

39 Except for the purpose of the last foregoing section, a Railway Commission shall be deemed to be dissolved at the close of the last of the sittings of the Commissioners for the decision of the cases referred to them

' any person who was a party to the
or of the representative of a y such
l may, if he thinks fit, in any case
in which the order passed by the Commissioners is not open to appeal, re appoint the Commissioners for the purpose of hearing an application for a review of their decision and of granting the same and re hearing the case if they think that the case should be re heard

Finality of orders of Railway Commission subject to the foregoing provisions of this Chapter

40 Subject to the foregoing provisions of this Chapter and to any direction of Her Majesty in Council an order of the Commissioners shall be final and shall not be questioned in or restrained by any Court

Bar of jurisdiction of ordinary Courts in certain matters cognizable by Railway Commission

41 Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter or of any order made thereunder by the Commissioners or by a High Court

Notes —The jurisdiction of Railway Commission is exclusive (1878) 3 Ry & Cas Tr Cas 238

Traffic Facilities

Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality

42 (1) Every railway administration shall, according to its powers afford all reasonable facilities for the receiving forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling stock

(2) A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever

(3) A ... ing railways which form part of
aving its terminus or station
nother railway administration,
eceiving and forwarding by one
er at such terminus or station,
such preference or advantage
that no obstruction may be

offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may by means of such railways be at all times afforded to the public in that behalf

(4) The facilities to be afforded under this section shall include the due and reasonable receiving forwarding and delivering by every railway administration at the request of any other railway administration, of through traffic to and from tha railway or any other railway administration at through rates

Provided as follows —

(*a*) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment, and the route by which the traffic is proposed to be forwarded The proposed through rate for animals or goods *may be per truck or per maund* ,

(*b*) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment and route, and, if it has any objection, what the grounds of the objection are ,

(*c*) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into *operation at the expiration of that period* ,

(*d*) if an objection to the rate, apportionment or route has been sent within the prescribed period, the Governor General in Council may, if he thinks fit, on the request of any of the railway administrations, refer the case to the Commissioners for their decision ,

(*e*) if the objection is to the granting of the rate or to the route, the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interests of the public and whether, regard being had to the circumstances the route proposed is a reasonable route, and shall allow or refuse the rate accordingly or fix such other rate as may seem to the Commissioners to be just and reasonable ,

(*f*) if the objection is only to the apportionment of the rate, and the case has been referred to the Commissioners, the rate shall come into operation at [illegible] period, but the decision of the Commissioners [illegible] retrospective in the case of any other objec[illegible] hall be suspended until the Commissioners make their order in the case ,

(*g*) the Commissioners in apportioning the through rate shall take into consideration all the circumstances of the case including any special expense incurred in respect of the construction, maintenance or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof ,

(*h*) the Commissioners shall not in any case compel any railway administration to accept lower mileage rates than the milage rates which the administration may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route ,

(*i*) subject to the foregoing provisions of this sub section, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum [illegible] entitled to charge and to allow and [illegible]

[illegible] oned in this sub section shall be one month, or such longer period as the Governor General in Council may by general or special order prescribe

Notes—The term "railway' includes all stations, offices, warehouses, ect, cons-

116 P L R 1911

Reserve accommodation—The reservation of separate carriages for European is not contrary to any provisions of the Act 21 Ind Cas 499, see also ... Cas 1011, 45 ... 62 Ind Cas

Undue preference in case of unequal rates for like traffic for services

43 (1) Whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area lower rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders or classes of traders, or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration

(2) ... ; or does not amount to an ... as they think reasonable, in ... case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made

Notes—In cases of lower rates for a particular trade the burden of proof lies on the railway administration that such rates are not due to undue preference

Provision for facilities and equal treatment where ships or boats are used which are not part of a railway

44 Where a railway administration is a party to an agreement for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat or raft which does not belong to or is not hired or worked by the railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat or raft in so far as it is used for the purposes of the traffic of the railway.

Terminals

45 A railway administration may charge reasonable terminals

Power of Railway Commission to fix terminals

46 (1) The Governor General in Council may, if he thinks fit, refer to the Commissioners for decision, any question or dispute which may arise with respect to the terminals charged by a railway administration, and the Commissioners may thereupon decide what is a reasonable sum to be paid ...

respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation.

CHAPTER VI

Working of Railways

General

General rules

47 (1) Every railway company and, in the case of a railway administered by the Government, an officer to be appointed by the Governor General in Council in this behalf, shall make general rules consistent with this Act for the following purposes, namely —

(*a*) for regulating the mode in which, and the speed at which, rolling tock used on the railway is to be moved or propelled,

(*b*) for providing for the accommodation and convenience of passengers lu;gage,

deemed to be, for the purposes of this s and for regulating the carriage of uch goods,

(*d*) for regulating the conditions on which the railway administration vill carry passengers suffering from infectious or contagious disorders, and roviding for disinfection of carriages which have been used by such passengers,

(*e*) for regulating the conduct of the railway servants,

(*f*) for regulating the terms and conditions on which the railway dministration will warehouse or retain goods at any station on behalf of the onsignee or owner, and

(*g*) generally, for regulating the travelling upon, and the use, working nd management of, the railway

(2) The rules may provide that any person committing a breach of any f them shall be punished with fine which may extend to any sum not xceeding fifty rupees, and that in the case of a rule made under clause (*e*) of ub section (1), the railway servants shall forfeit a sum not exceeding one nonth's pay, which sum may be deducted by the railway administration rom his pay

(3) A rule made under this section shall not take effect until it has eceived the sanction of the Governor General in Council and been published n the *Gazette of India*

Provided that, where the rule is in the terms of a rule which has already een published at length in the *Gazettee of India*, a notification in that azette, referring to the rule already published and announcing the adoption hereof, shall be deemed a publication of a rule in the *Gazette of India* vithin the meaning of this sub section

(4) The Governor General in Council may cancel any rule made under his section, and the *authority required by sub section* (1) *to make rules* hereunder may at any time, with the previous sanction of the Governor eneral in Council, rescind or vary any such rule

(5) Every rule purporting to have been made for any railway under ection 8 of the Indian Railways Act, 1879, and appearing from the *Gazette f India* to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of he rule, be deemed to have been made and to have taken effect under his section

(6) Every railway administration shall keep at each station on its ailway a copy *of the general rules for the time being in force under this* ection on the railway, and shall allow any person to inspect it free of charge t all reasonable times

Rules—Rules which are not *ultra vires*, although not framed under this ection must be obeyed by the Railway servants 12 Bom L R 930

Scope—This section does not create any criminal offence It merely gives o the company power to frame rules and to enforce them by imposing fines on ts own officers 11 C W N 583=5 Cr L J 463 The general rules framed by the Governor General in Council and published in the *Gazette of India* by notification dated the 3rd July, 190? do not become operative as the rules of an ndividual *Railway company, merely upon their adoption by the company It must* be shown that the particular Railway company made rules and that those rules have received the sanction of the Governor General in Council and have been publ shed in the manner prescribed by the Act 15 C W N 195 The provision n s 74 that the interval between the time of issue of a return ticket and the midn ght of the same day shall be counted as one day, is neither unrecoverable nor *ultra vires* 8 S L R 14

Disposal of differences between railways regarding conduct of joint traffic

48. Where two or more railway administrations whose railways have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication, are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, the Governor General in Council, upon the application of either or any of the administrations, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

Agreements with the Governor General in Council for construction or lease of rolling stock

49 Any railway company, not being a company for which the Statute 42 and 43 Vict, Chap 41, provides, may from time to time make and carry into effect agreements with the Governor General in Council for the construction of rolling stock, plant or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling stock, plant, machinery or equipments required for use on a railway, or for the maintenance of rolling-stock.

Powers of railway companies to enter into working agreements

50 Any railway company, not being a company for which the Statute 42 and 43 Vict, Chap 41, provides may from time to time make with the Governor General in Council, and carry into effect, or, with the sanction of the Governor General in Council, make with any other railway administration, and carry into effect, any agreement with respect to any of the following purposes, namely —

(*a*) the working, use, management and maintenance of any railway,

(*b*) the supply of rolling stock and machinery necessary for any of the purposes mentioned in clause (*a*) and of officers and servants for the conduct of the traffic of the railway,

(*c*) the payments to be made and the conditions to be performed with respect to such working, use, management and maintenance,

(*d*) the interchange, accommodation and conveyance of traffic being on, coming from or intended for, the respective railways of the contracting parties, and the fixing, collecting, apportionment and appropriation of the revenues arising from that traffic,

(*e*) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on

Provided that the agreement shall not affect any of the rates which the railway administrations, parties thereto, are, from time to time, respectively authorized to demand and receive from any person, and that every person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into

Establishment of ferries and roadways for accommodation of traffic

51. Any railway company, not being a company for which the Statute 42 and 43 Vict, Chap 41, provides, may from time to time, exercise with the sanction of the Governor General in Council, all or any of the following powers, namely —

(*a*) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry,

(*b*) it may work for purposes other than the accommodation of the traffic of the railway any ferry established by it under this section ,

(*c*) it may provide and maintain on any of its bridges, roadways for foot passengers, cattle, carriages, carts or other traffic ,

(*d*) it may construct and maintain roads for the accommodation of traffic passing to or from its railway ,

(*e*) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals or goods carried or to be carried on its railway ,

(*f*) it may charge tolls on the traffic using such ferries roadways roads or means of transport as it may provide under this section according to tariffs to be arranged from time to time with the sanction of the Governor General in Council

Additional power to provide and maintain transport services

*"51A (1) Any Railway Company, not being a Company for which the Statute 42 and 43 Vict , Chap 41, provides may frame a scheme for the provision and maintenance of a motor transport or aircraft service for passengers, animals or goods with a terminus at or near a station on the railway owned or managed by such company

(2) The scheme shall be submitted to the Governor General in Council who, after consultation with the Local Government or Local Governments concerned may sanction it, subject to such modifications and conditions as he may prescribe

(3) The scheme shall be published in the *Gazette of India* and thereupon the railway company shall, subject to sub section (4) have the power to provide and maintain a service in accordance therewith

(4) In respect of any service provided and maintained by any railway company under this section,—

(*a*) the company shall be deemed not to be a railway administration for the purposes of this Act or of any other enactment affecting railways and no property used conclusively for purposes of the service shall be deemed to be included in the railway or its rolling stock , and

(*b*) all enactments and rules for the time being in force relating to motor vehicles aircraft and roads shall apply accordingly

(5) The Governor General in Council after consultation with the Local Government or Local Governments concerned, may, by notification in the *Gazette of India*, after giving to the railway company six months' notice of his intention so to do, withdraw his sanction to any scheme mentioned under sub section (2) or may modify the scheme or impose further conditions on it "

Returns

52 Every railway administration shall, in forms to be prescribed by the Governor General in Council, prepare half yearly or at such intervals as the Governor General in [illegible] transactions and [illegible] and shall forward [illegible] such times as he may direct

Carriage of Property

Maximum load for wagons

53. (1) Every railway administration shall determine the maximum load for every wagon or truck in its possession and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck

(2) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck

* Added by Act XIX of 1933

(3) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the Governor General in Council for the class of axle under the wagon or truck

Power for railway administrations to impose conditions for working traffic

54. (1) Subject to the control of the Governor General in Council a railway administration may impose conditions, not inconsistent with this Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub section (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(3) A railway administration shall not be bound to carry any animals suffering from any infectious or contagious disorder

Notes —Ss 47 and 55 of the Act, empower the Railway Company to make rules determining the conditions under which such liability shall vest, and particularly, at [illegible] his Act, *i e*, [illegible] W N 725 [illegible] conditions [illegible] nnot be said [illegible] the goods are lost comes within these words 76 P R 1896

Lien for rates, terminals and other charges

55 (1) If a person fails to pay on demand made by or on behalf of a railway administration any rate, terminal or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods, or, if they have been removed from the railway any other animals or goods of such person then being in or thereafter coming into its possession

(2) When any animals or goods have been detained under sub section (1) the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days notice of the intended auction, published in one or more of the local newspapers, or where there are no such newspapers in such manner as the Governor General in Council may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including in the case of animals, the expenses of the feeding, watering and tending thereof

(3) Out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses aforesaid rendering the surplus if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto

(4) If a person on whom a demand for any rate, terminal or other charge due from him has been made fails to remove the railway within a reasonable time any animals or goods which have been detained under sub section (1) or any animals or goods which have remained unsold after a sale under sub section (2), the railway administration may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of sub section (3)

(5) Notwithstanding anything in the foregoing sub sections, the railway administration may recover by suit any such rate, terminal or other charges as aforesaid or balance thereof

Notes —This section has no application where the plaintiffs at the request of the railway company wanted to remove the goods but were not allowed to do it 47 All 549=23 A L J 398=87 Ind Cas 579=A I R 1925 All. 656

Disposal of unclaimed things on a railway

56 (1) When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto the railway administration shall, if such owner or person is known cause a notice to be served upon him requiring him to remove the animals or goods

(2) If such owner or person is not known or the notice cannot be served upon him or he does not comply with the requisition in the notice, the railway administration may within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly *as may be under the provisions of the last foregoing section* rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto

Notes —*Vide* 44 M 823=41 M L J 205, 1 Pat 15, 1921 M W N 122, 3 Bom L R 260

Power for railway administration to require indemnity on delivery of goods of certain cases

57 Where any animals goods or sale proceeds in the possession of a *railway administration are claimed by two or* more persons or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods or sale proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods or sale proceeds

Notes —No demurrage should be charged for the period taken for enquiry as regards the identity of the consignee 63 Ind Cas 256=2 Pat L T 523

Requisitions for written accounts of description of goods

58 (1) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on the request of any railway servant appointed in this behalf by the railway administration deliver to such servant an account in writing signed by such owner or person or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof

(2) If such owner, person or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods in order that their description may be ascertained, the railway administration may, (*a*) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods or, (*b*) in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate

(3) If an account delivered under sub section (1) is materially false with
orts to relate, and which
stration may charge in
g double the highest rate
y class of goods
and the owner or per
been brought to
e description of
ion, the railway
servant may detain and examine the goods
of the goods is
sub section (1), the
he owner of the

goods, then that person and the owner jointly and severally shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof

not different from that railway administration d be responsible to the owner of the goods for any such loss as aforesaid

Notes—*Vide* 36 P R 1885 Cr

Dangerous or offensive goods

59. (1) No person shall be entitled to take with him, or to require a railway administration to carry any dangerous or offensive goods upon a railway

(2) No person shall take any such goods with him upon a railway without giving notice of their nature to the station master or other railway servant in

or delivers them

(3) Any railway servant may refuse to receive such goods for carriage, and, when such goods have been so received without such notice as is mentioned in [sub section (2)]* having to his knowledge been given, may refuse to carry them, or may stop their transit

(4) If any railway servant has reason to believe any such goods to be contained in a package with respect to the contents whereof such notice as is mentioned in sub-section (2) has not to his knowledge been given, he may cause the package to be opend for the purpose of ascertaining its contents

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, or any rule under that Act, and nothing in sub sections tendered or delivered to any goods which an member of the Indian Terrioral Force, or of the Auxiliary Force, India, ‡ may take with him upon a railway in the course of his employment or duty as such

Exahibition to the public of authority for quoted rates

60 At every station at which a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person show to him at all reasonable times, and without payment of any fee, the rate-books or other documents in which the rate is authorized by the administration or administrations concerned

Requisitions on railway administrations for details of gross charges

61 (1) Where any charge is made by and paid to a railway administration in respect of the carriage of goods over its railway, the administration shall, on the application of the person by whom or on whose behalf the charge has been paid, render to the applicant an account showing how much of the charge comes under each of the following heads, namely —

(*a*) the carriage of the goods on the railway ,

(*b*) terminals ,

(*c*) demurrage , and

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* Substituted by Act IX of 1896 s 3

† Inserted by Act X of 1927

‡ The words within quotations have been substituted by Act 11 of 1923

(*d*) collection, delivery and other expenses,

but without particularising the several items of which the charge under each head consists

(2) The application under sub section (1) must be in writing and be made to the railway administration within one month after the date of the payment of the charge by or on behalf of the applicant, and the account must be rendered by the administration within two months after the receipt of the application

Carriage of Passengers

Communication between passengers and railway servants in charge of trains

62 The Governor General in Council may require any railway administration to provide and maintain in proper order, in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the the Governor General in Council has approved.

Maximum number of passengers for each compartment

63 Every railway administration shall fix, subject to the approval of the Governor General in Council, the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment, in English or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages as the Governor General in Council, after consultation with the railway administration, may determine

Reservation of compartments for females

64 (1) On and after the first day of January, 1891, every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train

(2) one such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet

Notes—This provision is especially made in India

Exhibition of time tables and tables of fares at stations

65 Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway, in English and in a vernacular language in common use in the territory where the station is situate a copy of the time tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which card tickets are ordinarily issued to passengers at that station

Notes—Time tables are tables of fare which are exhibited for facility of passengers

Supply of tickets on payment of fares

66 (1) Every person desirous of travelling on a railway shall, upon payment of his fare be supplied with a ticket, specifying the class of carriage for which, and the place from and the place to which, the fare has been paid, and the amount of the fare

(2) The matters required by sub section (1) to be specified on a ticket shall be set forth—

(*a*) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and

(*b*) if the class of carriage to be so specified is any other than the lowest class, then in English

Notes —Supply of tickets cannot be refused if fares are offered

Provision for case in which tickets have been issued for trains not having room available for additional passengers

67 (1) Fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train for which the tickets are issued

(2) A person to whom a ticket has been issued and for whom there is not room available in the train for which the ticket was issued shall on returning the ticket within three hours after the departure of the train be entitled to have his fare at once refunded

(3) A person for whom
for which he has purchased
of a lower class shall be
the difference between the
of carriage in which he travelled

Notes —Under this section 'fares shall be deemed to be accepted and tickets to be issued subject to the condition of their being room available in the train for *which the tickets are issued* 30 M 417 *This section not only operates in cases* where there are second class compartments but there is no room in those compartments 103 Ind Cas 316

Prohibition against travelling without pass or ticket

68 No person shall without the permission of a railway servant, enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket

Notes —Such travelling is not illegal where the intention to defraud is absent 44 C 279=25 C L J 610, 9 C P L R. 1, 13 M 34, 12 C 142, 35 Ind Cas 665

Exhibition and surrender of passes and tickets

69 Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination and at or near the end of the journey for which the pass or ticket was issued or, in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant

Return and season tickets

70 A return ticket or season ticket shall not be transferable, and may be used only by the person for whose journey to and from the places specified thereon it was issued

Single ticket —The sale of a single ticket is not penal under this Act 1 Weir 872

Power to refuse to carry persons suffering from infectious or contagious disorders

71 (1) A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1), clause (*d*), a person suffering from any infectious or contagious disorder

(2) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station master or other
[illegible] upon the railway
mentioned in sub-section
ffering from the disorder

Notes —Railway Company may refuse passengers suffering from infectious disease

that Government should investigate the question whether some provision ought not to be made either for the payment of overtime in such cases or for a compensatory period of rest

Section 71D —The body of sub section (1) gives effect to Article 2 of the *Geneva Convention*, and the proviso is based upon Article 4, read with paragraph 2 of Article 1 Sub sections (2) and (3) are based on Article 4 The proviso to sub-section (3) is based upon article 5 of Geneva Convention

Section 71E —*Section 71 E contains much reduced rule making power* necessary to implement the provisions of the Bill

Section 71F —We are of opinion that the investigation recommended by us in connection *with the proviso to clause 71C* should also cover the question of the payment of overtime or grant of compensatory periods of rest to railway servants who may have to work for extra time in the circumstances contemplated by this section

Section 71G —The scheme of this section is that the Governor General in Council should appoint suitable persons, who will be independent of the railway administrations to make regular inspections of labour conditions on railways in order to furnish Government with reliable and independent evidence of the manner in which the provisions of the law are being carried out—*Report of the Select Committee*

CHAPTER VII

Responsibility of Railway Administrations as Carriers

Measure of the general responsibility of a railway administration as a carrier of animals and goods

72 (1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151 and 161 of the Indian Contract Act, 1872

(2) An agreement purporting to limit that responsibility shall, in so far as it purports to affect such limitation, be void, unless it—

(*a*) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

- General in Council
the Carriers Act, 1865,
,pect to the carriage of
animals or goods, shall affect the responsibility as in this section defined of a railway administration

Notes —A horse carried by the defendant Railway Company was injured on the way and died in a few days after The horse was not carried at the owner's risk nor [illegible] that the accident [illegible] upon [illegible] pany, [illegible] ction 151 of the Contract Act The burden would only be discharged by proof that the horse box was in all respects sufficiently fitted, and adequately secured, and that on the journey such precautions as ordinary prudence dictates were taken by the Company's servants The burden of proof cannot be affected by the fact that the plaintiff had put forward and failed to make good, a theory of his own to account for the accident 3 N L R 94 Where a special agreement otherwise known as a 'risk note-form' B sanctioned by the Governor General in Council under clause 2 of this section, was given by a consignor of goods with a Railway Company the *Company* was exempt *from* all *liability* for loss occasioned by any cause whatsoever, the reason being that the company is not, in such cases, a bailee within the meaning of s 152 30 C 257=7 C W N 370 The intention of the legislature in enacting would appear to have been to define the liability of carriers by Railway as identical with that of bailees in ss 152 and *161 of* the Contract Act 97 P R 1886, see also 27 C W N 1017; 1923 Nag 174 Where a large quantity of goods of the same description are delivered to a carrier his

responsibility as such will continue until the whole is ready for delivery, and during the delay in the removal of the goods he is liable as ware house man 9 P R 1883 Damages for excess price could not be claimed by a consignee f

Company from liability in respect of any claim for compensation no matter how the loss, destruction deterioration or damage was caused, and the mere fact that such loss, etc, was due to the goods being negligently loaded in open wagons does not affect the question 113 P R 1908=15 P L R 1909 see also 5 O C 153, 2 N L R 125, 17 C W N 635, 17 C W N 529

but filed by a Railway clerk can nd Cas 143, 20 C W N 685 ssenger whether in charge of the ooked and receipt given for the same as required by s 74 56 P R 1897 Under this section the responsibility of a Railway Company for the loss or destruction of goods delivered to it to be carried by railway not at owner's risk is that of a bailee for hire under the Indian Contract Act 22 A 361=A W N 1900 111 In a suit for damages occasioned by such a loss the plaintiff need not prove how the loss was caused, but on proof of the loss the Company is bound to show that the loss occurred under circumstances which could exempt a bailee from responsibility for it 17 M 445 The position of a Railway Company is that of a bailee and it is bound under s 151 of the Contract Act to take such care of the goods as a person of ordinary prudence would do in respect of his own property under the circumstances 38 Ind Cas 143, 39 Ind Cas 904=10 S L R 196, 23 O C 96, 43 M 617 43 C L J 211 Where a railway company exercises the powers under section 55 illegally or wrongfully it is liable for illegal and wrongful detention and is not protected Ind Cas 370 The commencement of the this section for goods delivered to be carried upon the fact of a railway receipt having =39 B 485=29 Ind Cas 545 'Robbery' in risk note form B means the same thing as theft and not in the sense as defined by the Indian Penal Code L R 3 A 464 Sub section (2) limits the responsibility of the railway company to the extent specified in a risk note filled up and signed by the consigner 65 Ind Cas 342, 43 M L J 90, see also 24 Bom L R 787, 20 A L J 973 Property in the goods entrusted to a carrier remains with the owner, and he is bound to take delivery thereof even if they are damaged his remedy in that case being to claim compensation 96 Ind Cas 454 27 Punj L R 572 In the case of non delivery of goods though booked at owner's risk the burden of proving loss is on the railway 98 Ind Cas 936

Risk notes—*Vide* 94 Ind Cas 510 98 Ind Cas 329 97 Ind Cas 714, 97 Ind Cas 452, A I R 1916 Lah 591, 97 Ind Cas 318, 24 A L J 815, 91 Ind Cas 1007, 91 Ind Cas 603, 97 Ind Cas 450, 24 A L J 825, 91 Ind Cas 342, 94 Ind Cas 173, 92 Ind Cas 993, 28 Bom L R 718

Further provision with respect to the liability of a railway administration as a carrier of animals

73 (1) The responsibility of a railway administration under the last foregoing section for the loss destruction or deterioration of animals delivered to the administration to be carried on a railway shall not in any case exceed, in the case of elephants or horses, five hundred rupees a head or in the case of "mules * camels or horned cattle fifty rupees a head or, in the case of donkeys * sheep, goats, dogs or other animals ten rupees a head unless the person sending or delivering them to the administration caused them to be declared or declared them at the time of their delivery for carriage by railway, to be respectively of higher value than five hunded, fifty or ten rupees a head, as the case may be

* Inserted by Act IX of 1896

that Government should investigate the question whether some provision ought not to be made either for the payment of overtime in such cases or for a *compensatory period of rest*

Section 71D —The body of sub section (1) gives effect to Article 2 of the Geneva Convention, and the *proviso is* based upon Article 4, read with paragraph 2 of Article 1 Sub sections (2) and (3) are based on Article 4 The proviso to sub section (3) is based upon article 5 of Geneva Convention

Section 71E —Section 71 E *contains much* reduced rule making power necessary to implement the provisions of the Bill

Section 71F —We are of opinion that the investigation recommended by us in connection with the *proviso to clause 71C* should also cover the question of the payment of overtime or grant of compensatory periods of rest to railway servants who may have to work for extra time in the circumstances contemplated by *this section*

Section 71G —The scheme of this section is that the Governor General in Council should appoint *suitable* persons, who will be independent of the railway administrations to make regular inspections of labour conditions on railways in order to furnish *Government with* reliable and independent evidence of the manner in which the provisions of the law are being carried out—*Report of the Select Committee*

CHAPTER VII

RESPONSIBILITY OF RAILWAY ADMINISTRATIONS AS CARRIERS

Measure of the general responsibility of a railway administration as a carrier of animals and goods

72 (1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151 and 161 of the Indian Contract Act, 1872

(2) An agreement purporting to limit that responsibility shall, in so far as it purports to affect such limitation, be void, unless it—

(*a*) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(*b*) is otherwise in a form approvec

(3) Nothing in the Common Law regarding the responsibility of common animals or goods, shall affect the responsibility as in this section defined of a railway administration

Notes —A horse carried by the defendant Railway Company was injured on the [illegible] The horse was not carried at the owner s risk nor [illegible] he plaint that the accident [illegible] The suit was thereupon [illegible] on the defendant company [illegible] of a bailee under section 151 of the Contract Act The burden would only be discharged by proof that the horse box was in all respects sufficiently fitted, and adequately secured, and that on the journey such precautions as ordinary prudence dictates were taken by the Company s servants The burden of proof cannot be affected by the fact that the plaintiff had put forward and failed to make good, a theory of his own to account for the accident 3 N L R 94 Where a special agreement otherwise known as a 'risk note-form' B sanctioned by the Governor General in Council under clause 2 of this section, was given by a consignor of goods with a Railway Company the Company was exempt from all liability for loss occasioned by any cause whatsoever, the reason being that the company is not, in such cases, a bailee within the meaning of s 152 30 C 257=7 C W N 370 The intention of the legislature in enacting would appear to have been to define the liability of carriers by Railway as identical with that of bailees in ss 152 and 161 of the Contract Act 97 P R 1886, see also 27 C W N 1017, 1923 Nag 174 Where a large quantity of goods of the same description are delivered to a carrier his

responsibility as such will continue until the whole is ready for delivery, and during the delay in the removal of the goods, he is liable as ware house man 92 P R 1883 Damages for excess price could not be claimed by a consignee for delay in delivery where
as to special time or pur
risk note executed on a
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the provisions of this secti
terms of such agreement which is legally valid under the provisions of this statute 18 A 42=A W N 1895 150 An agreement in Form B relieves the Railway Company from liability in respect of any claim for compensation, no matter how the loss, destruction, deterioration or damage was caused, and the mere fact that such loss, etc, was due to the goods being negligently loaded in open wagons does not affect the question 113 P R 1908=15 P L R 1909; see also 5 O C 153, 2 N L R 125, 17 C W N 635, 17 C W N 529

A risk note not signed by the consignor on his behalf but filed by a Railway clerk cannot relieve the company of its responsibility 30 Ind Cas 143, 20 C W N 685 This section is applicable to the luggage of a passenger whether in charge of the passenger or of the railway servant, if it had been booked and receipt given for the same as required by s 74 56 P R 1897 Under this section the responsibility of a Railway Company for the loss or destruction of goods delivered to it to be carried by railway not at owner s risk is that of a bailee for hire under the Indian Contract Act 22 A 361=A W N 1900, 111 In a suit for damages occasioned by such a loss the plaintiff need not prove how the loss was caused, but on proof of the loss the Company is bound to show that the loss occurred under circumstances which could exempt a bailee from responsibility for it 17 M 445 The position of a Railway Company is that of a bailee, and it is bound under s 151 of the Contract Act to take such care of the goods as a person of ordinary prudence would do in respect of his own property under the circumstances 38 Ind Cas 143, 39 Ind Cas 904=10 S L R 196, 23 O C 96, 43 M 617, 43 C L J 211 Where a railway company exercises the powers under section 55 illegally or wrongfully it is liable for illegal and wrongful detention and is not protected by this section 11 A L J 335=19 Ind Cas 370 The commencement of the liability of a Railway Company under this section for goods delivered to be carried by the railway is in no way dependent upon the fact of a railway receipt having been granted 17 Bom L R 496=39 B 485=29 Ind Cas 545 'Robbery" in 'risk note form B means the same thing as theft and not in the sense as defined by the Indian Penal Code L R 3 A 464 Sub section (2) limits the responsibility of the railway company to the extent specified in a risk note filled up and signed by the consigner 65 Ind Cas 342, 43 M L J 90, see also 24 Bom L R 787, 20 A L J 973 Property in the goods entrusted to a carrier remains with the owner, and he is bound to take delivery thereof even if they are damaged, his remedy in that case being to claim compensation 96 Ind Cas 454, 27 Punj L R 572 In the case of non delivery of goods though booked at owner s risk the burden of proving loss is on the railway 98 Ind Cas 936

Risk notes—*Vide* 94 Ind Cas 510, 98 Ind Cas 329 97 Ind Cas 714, 97 Ind Cas 452, A I R 1916 Lah 591, 97 Ind Cas 318, 24 A L J 815, 91 Ind Cas 1007, 91 Ind Cas 603, 97 Ind Cas 450, 24 A L J 825, 91 Ind Cas 342, 94 Ind Cas 173, 92 Ind Cas 993, 28 Bom L R 718

Further provision with respect to the liability of a railway administration as a carrier of animals

73. (1) The responsibility of a railway administration under the last foregoing section for the loss destruction or deterioration of animals delivered to the administration to be carried on a railway shall not in any case exceed, in the case of elephants or horses, five hundred rupees a head or, in the case of "mules,"* camels or horned cattle, fifty rupees a head or, in the case of "donkeys"* sheep, goats, dogs or other animals, ten rupees a head unless the person sending or
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be

* Inserted by Act IX of 1896

(2) Where such higher value has been declared, the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid

(3) In every proceeding against a railway administration for the recovery of compensation for the loss destruction or deterioration of any animal, the burden of proving the value of the animal, and where the animal has been injured, the extend of the injury, shall lie upon the person claiming the compensation

Notes—When the consignor omitted to declare the value of the goods under this section the Railway Company is not liable for more than Rs 10 per each head of the animals carried 38 Ind Cas 143

Further provision with respect to the liability of a railway administration as a carrier of luggage

74 A railway administration shall not be responsible for the loss, destruction or deterioration of any luggage belonging to or in charge of a passenger unless a railway servant has booked and given a receipt therefor

Notes—*The receipt given to a passenger under this section is a token of delivery to the railway administration for carriage by a railway* A luggage belonging
ervant and for which a
ckage delivered to a rail
56 P R 1897

Further provision with respect to the liability of a railway administration as a carrier of articles of special value

75 (1) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk

(2) When any parcel or package of which the value has been declared under sub section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss destruction or deterioration shall not exceed the value so declared and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration lie on the person claiming the compensation

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actual by contains the article declared to be therein

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463, 34 A 422 Where the contents of a parcel are delared by the plaintiff but the Railway Company did not demand any insurance charge, held that the declaration made by the plaintiff was a sufficient declaration under this section 7 A L J 606=6 Ind Cas 333 The words 'loss, deterioration or destruction contained in this section

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by a consignor of silver coin of special rate required by the general regulations of a railway company to be paid for the carriage of such goods is not such a payment as satisfied the requirements of this section 19 B 159 An article under Sch II need be of special value in order to attract the provisions of this section 41 M L J 603=14 L W 614=192 M W N 852, 17 A L J 1031=52 Ind Cas 644, 2 P L J 1919 The word 'value in this section does not necessarily mean 'market value If an article has special value to the owner beyond the market value and if he wished to recover that value he must declare and insure the goods 43 B 386=21 Bom L R 6—49 Ind Cas 396, 20 Bom L R 591=44 Ind Cas 401 Where articles specified in Schedule II of the Act and therefore requiring a declaration under this section

proof as to what articles were con
ent l es on the consignee 103 Ind
is section does not include the plural
328

76 In any suit against a railway administration for compensation for loss, destruction or deterioration of animals or goods delivered to a railway administration for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused

Burden of proof in suits in respect of loss of animals or goods

Notes—This section provides that in any suit against a Railway Company for compensation for loss or destruction of goods delivered to it for carriage, it shall not be necessary to prove how the loss or destruction was caused It is enough for the plaintiff to prove delivery of the goods to the company and the fact that the goods were destroyed while in the custody of the company, The company should prove that they have exercised the care required by the Indian Contract Act of bailees for hire if they are to escape from liability 22 A 361=A W N 1900 111, 17 M 445, 127 P R 1882, 21 Bom L R 407 Where there is a risk note the onus lay upon the plaintiff to prove that the loss was not caused by any of the risks undertaken by the owner under the risk note 41 C 576=19 C W N 95=19 C L J 142 In a suit for compensation for non delivery of goods consigned to the railway for carriage on an approved risk note, it is for the railway company to prove the loss, and for the plaintiff to prove that the loss was caused by the theft or wilful neglect of the company's servants 13 Bur L T 190, see also 23 Bom L R 583=64 Ind Cas 4, 73 Ind Cas 642, 49 Ind Cas 498 22 C W N 622, 75 Ind Cas 260 72 Ind Cas 779, 21 A L J 896 30 C W N 209 In a suit to recover damages for short delivery of goods consigned under the risk note form B the Railway Company can not escape liability by merely admitting the loss but it must have evidence to show that the goods were lost 45 Bom L R 1201=63 Ind Cas 241 The Railway Company can not plead in defence the risk note as freeing it from all responsibility, when the loss of the property in question is due to the wilful neglect of the railway administration or theft or neglect of its servants 69 Ind Cas 193=3 Pat L T 215 Where the consignor has signed a risk note in the usual form he must prove that there had been a loss of one or more complete packages out of the consignment and that the loss was due to the wilful neglect of the Railway Company or its servants 86 Ind Cas 303=A I R 1925 Bom 96 Section 76 of the Act does not apply to contracts limiting the liability of the Railway Company under this Act 78 Ind Cas 449

77 A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the

Notification of claims to refunds of overcharges and to compensation for losses

(2) Where such higher value has been declared, the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid

(3) In every proceeding against a railway administration for the recovery of compensation for the loss destruction or deterioration of any animal, the burden of proving the value of the animal, and, where the animal has been injured, the extend of the injury, shall lie upon the person claiming the compensation

Notes—When the consignor omitted to declare the value of the goods under this section the Railway Company is not liable for more than Rs 10 per each head of the animals carried 38 Ind Cas 143

Further provision with respect to the liability of a railway administration as a carrier of luggage

74 A railway administration shall not be responsible for the loss, destruction or deterioration of any luggage belonging to or in charge of a passenger unless a railway servant has booked and given a receipt therefor.

Notes—The receipt given to a passenser under this section is a token of delivery to the railway administration for carriage by a railway A luggage belonging [illegible] rvant and for which a [illegible] kage delivered to a rail [illegible] 56 P R 1897

Further provision with respect to the liability of a railway administration as a carrier of articles of special value

75 (1) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk

(2) When any parcel or package of which the value has been declared under sub section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actual by contains the article declared to be therein

Notes—When a passenger fails to make a declaration in respect of a luggage belonging to him which is valued at a sum exceeding Rs 100 under this section the railway administration is free from liability for the loss thereof both as regards scheduled and non scheduled articles contained therein 56 P R 1897 A railway passenger, whose box containing clothes, gold and silver ornaments and currency [illegible] servants for [illegible] er the value [illegible] had made a [illegible] cage in this [illegible] of the Act [illegible] 15 P L R [illegible] hich silk [illegible] whether [illegible] or not [illegible] 37 A

463, 34 A 422 Where the contents of a parcel are delared by the plaintiff but the
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by a consignor of silver coin of special rate required by the general regulations of a railway company to be paid for the carriage of such goods is not such a payment as satsfied the requirements of this section 19 B 159 An article under Sch II need be of spec al value in order to attract the provisions of this section 41 M L J 603=14 L W 614=192 M W N 852, 17 A L J 1031=52 Ind Cas 644, 2 P L J 1919 The word value in this section does not necessarily mean market value If an article has special value to the owner beyond the market value and if he wished to recover that value he must declare and insure the goods 43 B 386=21 Bom L R 6=49 Ind Cas 396, 20 Bom L R. 591=44 Ind Cas 401 Where articles specified in Schedule II of the Act and therefore requiring a declaration under this section were included in a cons gnment the burden of proof as to what articles were contained in each specific parcel in the consignment l es on the consignee 103 Ind Cas 756 The word parcel or package' in this section does not include the plural as well 103 Ind Cas 756=A I R 1927 Nag 328

Burden of proof in suits in respect of loss of animals or goods

76 In any suit against a railway administration for compensation for loss, destruction or deterioration of animals or goods delivered to a railway administration for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused

Notes—This section provides that in any suit against a Railway Company for compensation for loss or destruction of goods delivered to it for carriage, it shall not be necessary to prove how the loss or destruction was caused It is enough for the
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3 Pat L T 215
Where the consignor has signed a risk note in the usual form he must prove that there had been a loss of one or more
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Cas 44)

Notification of claims to refunds of overcharges and to compensation for losses

77 A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the

railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

Notes —Though this section confers a privilege on railway administration it does not exempt the company from the l
to carry the goods and delive
Company will be liable for dama
other than the owner 6 P R 18c
the claim is given to the Company to which the goods were delivered Such notice must be given within the specified time to the Company whom the plaintiff wishes to hold liable In the absence of such notice, the
be dismissed 26 A 207=A W N 1903, 235 ,
this section knowledge by a Railway Company
cated to it in the prescribed mode 26 B 66c
543 ; 31 B 534 , 17 C W N 1131 The T
dered as the Manager's Agent
cient compliance of this section ,
tion 24 C 307 , 28 A 532=3 A
N 459 , 44 A 645 ; 19 A L J 180 , 19 C W N 62 , 16 C W N 356 Notice of claim for goods lost in transit given to Railway Company A with whom they were originally booked, is not sufficient notice within ss 77 and 140 of the Act, to Railway Company on whose line the goods were subsequently lost 12 C W N 165 , 23 Bom L R 866 The notice of claim under this section must be served under s 140
y 21 C W N 751 But the law does not
thrust in the Agent's hand It is sufficient
nt has had full knowledge and notice of the
claim 13 C W N 24=4 M L T 427=3 Ind Cas 479 , 22 M 137 Where notice of claim is given to a Railway by post, it must be forwarded in a registered cover 12 C L J 14=14 C W N 888=7 Ind Cas 241 In the case of a railway admi
section is effective if served on Govern-
44 C 17=34 Ind Cas 130 The law
agent, and whether a particular officer
such notice on this behalf is a question
e 20 C W N 696 , 13 Ind Cas 297
In the absence of any rules or course of conduct whereunder the right to receive such notice is delegated by the agent to the District Traffic Superintendent, notice to the latter is no good 14 C W N 685 , 1919 Pat 150=49 Ind Cas 498 ; see also 9 A L J 492=34 A 442=13 Ind Cas 803 Where there is loss of consignment,

725=A L R 1925 All 144
The notice required to be given by s 77 need not state the money value of the claim, and the omission does not therefore vitiate it 89 Ind Cas 490

Exoneration from responsibility in case of goods falsely described

78 *Notwithstanding anything in the foregoing provisions of this Chapter,* a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which an account materially false has been delivered under sub-section (1) of section 58 if the loss, destruction or deterioration is in any way brought about by the false account, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account

Settlement of compensation for injuries to officers soldiers airmen and followers on duty

79 Where an officer, soldier, "sailor"* "airman"† or follower, while being or travelling as such on duty upon a railway belonging to, and worked by, the Government, loses his life or receives any personal injury in such circumstances that, if he were not an officer,

* Inserted by Act 35 of 1934
† Inserted by Act 10 of 1927

soldier, sailor * airman † or follower being or travelling as such on duty upon the railway compensation would be payable under Act No XIII of 1855 or to him as the case may be, the form and amount of the compensation to be made in respect of the loss of his life or his injury shall where there is any provision in this behalf in the military naval † "or airforce * regulations to which he was immediately before his death, or is subject, be determined in accordance with those regulations and not otherwise.

Suits for compensation for injury to through booked traffic

80 Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration a suit for compensation for loss of the life of or personal injury to, a passenger, or for loss destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more [illegible] railway administra[illegible] ised his ticket, or to [illegible] or thereof as the case [illegible] lway the loss, injury, destruction or deterioration occurred

Notes —A railway company receiving goods for carriage over a Foreign Railway is liable for the loss of goods even though the loss did not occur upon their system 7 A L J 833=7 Ind Cas 16[illegible] The railway is not bound to open the [illegible]

[illegible] A L J [illegible] 21 Ind Cas 4[illegible] 61 Ind Cas 926=3 [illegible] a railway [illegible] the loss [illegible] be passed [illegible] s 70 and [illegible] he owner [illegible] nd Cas [illegible] through [illegible] delivery [illegible] 6 Lah 499=26 Punj L R 853 In a [illegible] ods the company must prove loss before relying on the exemption clause in a risk note and then the plaintiff should prove wilful neglect in order to hold company liable 1924 Nag 288

81 [*Repealed by Act IX of 1896 s 5*]

Limitation of liability of railway administration in respect of accidents at sea

82 (1) When a railway administration contracts to carry passengers animals or goods partly by railway and partly by sea a condition exempting the railway administration from responsibility for any loss of life personal injury or loss of or damage to animals or goods which may happen during the carriage by sea from the act of God, the King s enemies fire accidents from machinery boilers and steam and all and every other dangers and accidents of the seas rivers and navigation of whatever nature and kind soever shall without being expressed, be deemed to be part of the contract, and subject to that condition the railway administration shall, irrespective of the nationality or ownership of the ship used for the carri

* Inserted by Act 35 of 1934 † Inserted by Act 10 of 1927

age by sea, be responsible for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping Act,

862, if the ship were

administration were

(2) The burden of proving that any such loss, injury or damage as is mentioned in sub section (1) happened during the carriage by sea shall lie on the railway administration

CHAPTER VIII

ACCIDENTS.

Report of railway accidents

(a) any accident attend

as defined in the Indian Penal Code, or with serious injury to property,

(b) any collision between train of which one is a train carrying passengers,

(c) the derailment of any train carrying passengers or of any part of such a train,

attended with loss of human life

or

injury to property,

the Governor General in

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India,

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to

nistration, the other railway administration also shall, without unnecessary delay, send notice of the accident to the Local Government and to the Inspector appointed for the railway, and the station master nearest to the place at which the accident occurred

rvant in charge of the section

ll, without unnecessary delay,

district in which the accident

station within the local limits

of which it occurred or to such other Magistrate and police officer as the Governor General in Council appoints in this behalf

Notes—Where a man was killed by a fall of gravel in a *ballast* pit on a railway company's own land, which was used by the company to get gravel for the maintenance and repair of the line it was held that the accident did not happen "in the course of working the Railway *Scott v Maitland Rail Co (1901) 1 K B 317*

Power to make rules regarding notices of and inquiries into accidents

84 The Governor General in Council may make rules consistent with this Act and any other enactment for the time being in force for all or any of the following purposes, namely:—

(a) for prescribing the forms of the notices mentioned in the last foregoing section, and the particulars of the accident which those notices are to contain,

(b) for prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred,

(c) for prescribing the duties of railway servants, police-officers, Inspectors and Magistrates on the occurrence of an accident.

Submission of return of accidents

85 Every railway administration shall send to the Governor General in Council a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner and at such intervals of time as the Governor General in Council directs

86 Whenever any person injured by an accident on a railway claims compensation on account of the injury, any Court or person having by law or consent of parties authority to determine the claim may order that the person injured be examined by some duly qualified medical practitioner named in the order and not being a witness on either side, and may make such order with respect to the costs of the examination as it or he thinks fit

Provision for compulsory medical examination of person injured in railway accident

CHAPTER IX

PENALTIES AND OFFENCES

Forfeitures by Railway Companies

87 If a railway company fails to comply with any requisition made under section 13 it shall forfeit to the Government the sum of two hundred rupees for the default and a further sum of fifty rupees for every day after the first during which the default continues

Penalty for default in compliance with requisition under section 13

Notes—Section 13 makes provisions for fences screens, gates and bar by railway company

88 If a railway company moves any rolling stock upon a railway by steam or other motive power in contravention of section 16, sub section (2), or opens or uses any railway or work in contravention of section 18, section 19, section 20 or section 21, or re opens any railway or uses any rolling stock in contravention of section 24, it shall forfeit to the Government the sum of two hundred rupees for every day during which the motive power, railway, work or rolling stock is used in contravention of any of those sections

Penalty for contravention of sections 16 18, 19, 20, 21 or 24

Notes—Sections 16, 18 19, 20, 21 and 24 lay down the procedure to be followed in opening or re opening railways

89 If a railway company fails to comply with the provisions of section 47, sub-section (6) section 54, sub section (2), or section 65, with respect to the books or other documents to be kept open to inspection or conspicuously posted at stations on its railway, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues

Penalty for not having certain documents kept or exhibited at stations under section 47, 54 or 65

90 If the railway company fails to comply with the provisions of section 47 with respect to the making of general rules, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues

Penalty for not making rules as required by section 47

91 If a railway company refuses or neglects to comply with any decision of the Governor General in Council under section 48, it shall forfeit to the Government the sum of two hundred rupees for every day during which the refusal or neglect continues

Penalty for failure to comply with decision under section 48

Notes—This penalty is imposed for failure to comply with the decision of Governor General in Council regarding the differences of two railway companies

92 If a railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return

Penalty for delay in submitting returns under section 52 or 85

93 If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections it shall forfeit to the Government the sum of twenty rupees for every day during which either section is contravened

Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling stock

Notes —Carrying extra passengers are made punishable

94 If a railway company fails to comply with any requisition of the Governor General in Council under section 62 for the provision and maintenance in proper order, in any train worked by it, which carries passengers, of such efficient means of communication as the Governor General in Council has approved, it shall forfeit to the Government the sum of twenty rupees for each train run in disregard of the requisition

Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants

95 If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the Government the sum of twenty rupees for every train in respect of which the default occurs

Penalty for failure to reserve compartments for females under section 64

96 If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the Government the sum of one hundred rupees for every day during which the omission continues

Penalty for omitting to give the notices of accidents required by section 83 and under section 84

97 (1) When a railway company has through any act or omission forfeited any sum to the Government under the foregoing provisions of this Chapter, the sum shall be recoverable by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred

Recovery of penalties

(2) The suit must be instituted with the previous sanction of the Governor-General in Council, and the plaintiff therein shall be the Secretary of State for India in Council

(3) The Governor General in Council may remit the whole or any part of any sum forfeited by a railway company to the Government under the foregoing provisions of this Chapter

98 Nothing in those provisions shall be construed to preclude the Government from resorting to any other mode of proceeding instead of, or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act,

Alternative or supplementary character of remedies afforded by the foregoing provisions of this Chapter

Offences by Railway Servants

99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees

Breach of duty imposed by section 60

100 If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine, or with both

Drunkenness

Notes—The procedure of the first part is like that of a summons case and the procedure of the second part is like that of a warrant case 5 M L T 204

Endangering the safety of persons

101 If a railway servant, when on duty, endangers the safety of any person—

(*a*) by disobeying any general rule made, sanctioned, published and notified under this act, or

(*b*) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(*c*) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees or with both

Notes—When a gateman does not open a gate when the train was approaching he commits an offence under this section 9 P R 1892 Cr Under this section the offence consists in (1) disobeying rules or doing any rash or negligent act and (2) thereby endangering the safety of any person It is not sufficient to show that the act of the accused or any omission on his part was likely to endanger the safety of any person It must be proved affirmatively that it did in point of fact so endanger any person's safety 8 P L R 1910 Cr, 22 Ind Cas 161 When the guard of a train charged under s 101 (b) the burden of proof that he did not place the requisite number of detonators as required by General Rule 86 read with Rule 9 of the G I P Ry working instructions is upon the prosecutions 21 Ind Cas 996 As regards punishment the gravity of the offence should be estimated not by actual ultimate consequences but by the risk involved for the rule breaker might be punished even though no accident occurred 15 Bom L R 702=37 B 885, see also 32 C 73, 4 L B R 353, 11 C W N 173, 13 P R 1906 Cr, Rat Un Cr C 721, 1 Weir 869 1 Weir 868 4 L B R 139 No sanction is necessary to the institution of a complaint of an offence under this section 9 P R 1892 Cr A station master is not merely bound to give the proper orders but bound to see that they are properly carried out 22 A L J 20 A disregard of rule by station master is an offence 6 Lah 324=26 Cr L J 658=86 Ind Cas 61 It is incumbent on the prosecution to prove (1) but the accused committed a breach of the rule and (2) that he endangered the safety of passengers thereby 26 O C 363=81 Ind Cas 917=25 Cr L J 1093=1924 Oudh 250

Compelling passengers to enter carriages already full

102 If a railway servant compels or attempts to compell or cuases, any passenger to enter a compartment which already contains the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees

Omission to give notice of accident

103 If a station master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees

Obstructing level crossings

104 If a railway servant unnecessarily—

(*a*) allows any rolling stock to stand across a place where the railway crosses a public road on the level, or

(*b*) keeps a level crossing closed against the public,

he shall be punished with fine which may extend to twenty rupees

105 If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees or with imprisonment which may extend to one year, or with both.

False returns

Other Offences

106 If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable

Giving false account of goods

107 If in contravention of section 59 a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway

Unlawfully bringing dangerous or offensive goods upon a railway

108 If a passenger, without reasonable and sufficient cause makes use of or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees

Needlessly interfering with means of communication in a train

as to what constitutes reason the circumstances of each case a passenger is justified in pull nded for the protection of the personal safety of passengers who are travelling by train The mere fact that a passenger lef his coat on the platform is not a reasonable and sufficient cause within the meaning of this section 28 Bom L R 486=95 Ind Cas 58=27 Cr L J 730=6 Cr R 300=A I R 1926 Bom 288 The risk of damages of loss and discomfort to the other passengers on a train by stopping the train by pulling the communication cord is one element that has to be considered for the purpose of deciding whether there was reasonable and sufficient cause to stop the train by pull ependently o the cord can nger id to ether ilway time and train 25 A L J 975=105 Ind Cas 679=28 Cr L J 967=A I R 1927 All ion and out his e alarm 8 Lah 476

109 (1) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon under section 63, refuses to leave it when required to do so by any railway servant, he shall be punished with fine which may extend to twenty rupees

Entering compartment reserved or already full or resisting entry into a compartment not full

(2) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees

Reserved Compartment—A non European can be punished for enterning into a compartment reserved for European 45 M 215 These provisions of the Act confer a right upon the occupants of a compartment to resist the entry of a new passenger when the compartment contains the full number 1 Pat 260

Smoking

110. (1) If a person, without the consent of his fellow passengers, if any, in the same compartment, smokes in any compartment except a compartment specially provided for the purpose, he shall be punished with fine which may extend to twenty rupees

(2) If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub section (1), be removed by any railway servant from the carriage in which he is travelling

Compartment—The term "compartment' means a division of a railway carriage separated from the other divisions by partitions right up to the roof of the carriage, each such division being completely screened off from its adjoining division 24 B 293=1 Bom L R 688

Defacing public notices

111. If a person, without authority in this behalf, pulls down or wilfully injures any board or document set up or posted by order of a railway administration on a railway or any rolling stock, or obliterates or alters any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees

Fraudulently travelling or attempting to travel without proper pass or ticket

112 If a person, with intent to defraud a railway administration,—

(*a*) enters in contravention of section 68 any carriage on a railway, or

(*b*) uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket, a half thereof which has already been so used,

he shall be punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

Entry—The mere entry into a railway carriage without ticket without any intent to defraud the company, does not constitute an offence under this section 27 P R 1908 Cr = 124 P L R 1908 Where the accused travelled with his 6 years old son from one station to another without paying his half ticket he is liable as an abettor 1 Weir 869 (F B) An entry without any intention to defraud in not offence 21 Cr L J. 665

Single fare—The total fine imposed shall not exceed Rs 100 plus the single fare mentioned in the section 17 C P L R 32 Where the accused has travelled with [illegible] ss 419, 511 of the Penal Code. 21 M L J [illegible] es not apply where a person after having [illegible] travels on the strength of that ticket beyond [illegible] R Cr 1 To justify a conviction under this section the prosecution must prove entry without a ticket with fraudulent intent 1 Weir 870, 11 C W N 100 An expired ticked is not a proper ticket 1 Weir 870

Travelling without pass or ticket or with insufficient pass or ticket or beyond authorized distance

113 (1) If a passenger travels in a train without having a proper pass or a proper ticket with him, or, being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 69, he shall be liable to

pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined or in case of their having being examined more than once, were last examined

(2) If a passenger travels or attempts to travel in or on a carriage, or by a train of a higher class than that for which he has obtained a pass or purchased [illegible] authorized by his pass [illegible] ny railway servant ap[illegible] excess charge herein after in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made

(3) The excess charge referred to in sub section (1) and sub section (2) shall —

[illegible] immediately after incurring the charge and [illegible] servant notified to the railway servant on [illegible] charge having been incurred, by one rupee two annas or eight annas and

(*b*) in any other case, be six rupees, one rupee or three rupees, according as the passenger is travelling or has travelled or has attempted to travel, in a carriage of the highest class or in a carriage of the lowest class or in a carriage of any other class or kind

Provided that such excess charge shall in no case exceed,—

(*a*) where the liability to pay it arises under sub-section (1), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub section, or

(*b*) where such liability arises under sub-section (2), the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made

(4) If a passenger liable to pay the excess charge and fare mentioned in sub section (1) or the excess charge and any difference of fare mentioned in sub section (2), fails or refuses to pay the same on demand being made therefor under one or other of those sub sections as the case may be, the sum payable by him shall on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf, be recovered by the Magistrate from the passenger as if it were a fine imp sed on the passenger by the Magistrate and shall, as it is recovered, be paid to the railway administration

Scope —The provisions in this section which directs that on failure to pay on demand excess charge and fare when due, the amount shall on application be recovered by a Magistrate as if it were a fine does not authorize the Magistrate to impose imprisonment in default The excess charge and fare referred to in this section is not a fine, though it may be recovered as such 18 B 440, 1 Bom L R 166, 20 M 385, L B R (1872 1892) 606 20 A 95 5 N L R 151 Section 5 of the General Clauses Act makes s 64 of the Penal Code applicable to the recovery of excess *charge and fare ordered to be* paid under this section Rat Un Cr C 871 A Magistrate proceeding under this section is open to revision 13 P R 189 It is an offence under this section to travel without a ticket 1 Wier [illegible] a proceeding under this section neither s 31 [illegible] 892=1896) Vol I 300 The issue of distress [illegible] any enquiry is illegal 24 C W N 195 *The* [illegible] 4 is exclusive and consequently a claim by a railway company to recover the ordinary excess fare from passenger travelling without a ticket can be entertained only by a Magistrate and a suit to enforce it does not lie in a civil Court 28 Bom L R 443=50 B 215=94 Ind Cas 742=

A I R 1926 Bom 266 The onus in a suit for recovery of amount paid for the railway and penalty for travelling without ticket is on the plaintiff to prove that the amount was improperly levied 102 Ind Cas 158 This section requires that passengers must have in their possession immediately ava lable throughout the journey the tickets which entitle them to travel 23 N L R 121

Transferring any half of return ticket

114 If a person sells or attempts to sell, or parts or attempts to part with the possession of "any half" * of a return ticket in order to enable any other person to travel therewith, or purchases such half of a return ticket, he shall be punished with fine which may extend to fifty rupees and, if the purchaser of such half of a return ticket travels or attempts to travel therewith, he shall be punished with an additional fine which may extend to the amount of the single fare for "the journey"* authorized by the ticket

Disposal of fines under the two last foregoing sections

115 That portion of any fine imposed under section 112 or the last foregoing section which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government

Altering or defacing pass or ticket

116 If a passenger wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees

Being or suffering person to travel on railway with infectious or contagious disorder

117 (1) If a person suffering from an infectious or contagious disorder enters or travels upon a railway in contravention of section 71, of sub-section (2) he, and any person having charge of him upon the railway when he so entered or travelled thereon shall be punished with fine which may extend to twenty rupees, in addition to the forfeiture of any fare which either of them may have paid, and of any pass or ticket which either of them may have obtained or purchased, and may be removed from the railway by any railway servant

(2) If any such railway servant as is referred to in section 71, sub-section (2), knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers, he shall be punished with fine which may extend to one hundred rupees

Entering carriage in motion, or otherwise improperly travelling on a railway

118 (1) If a passenger enters or leaves or attempts to enter or leave, any carriage while the train is in motion, or else where than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or [illegible] f any carriage while the train is in [illegible] n may extend to twenty rupees [illegible] a railway servant to desist persists in travelling on the roof steps or footboard of any carriage or on an engine or in any other part of a train not intended for the use of passengers he shall be punished with fine which may extend to fifty rupees and may be removed from the railway by any railway servant

Passenger—A seller of fruit at the platform is not a passenger 1 Weir 873 The 'passenger' denotes a person who without the permission of a railway servant can enter any carriage of a railway for the purpose of travelling therein as a passenger 15 Bom L R 996, see also 25 P R 1903 Cr, 31 P R 1905

* The words quoted have been inserted by Act IX of 1896 s 6.

Entering the carriage or other place reserved for females

119. If a male person, knowing a carriage, compartment, room or other place to be reserved by a railway administration for the exclusive use of females, enters the place without lawful excuse, or, having entered it, remains therein after having been desired by any railway servant to leave it he shall be punished with fine which may extend [illegible] fare which he may [illegible] ned or purchased,

Drunkenness or nuisance on a railway

120. If a person in any railway carriage or upon any part of a railway—

(a) is in a state of intoxication, or

(b) commits any nuisance or act of indecency, or uses obscene or abusive language or

(c) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp

he shall be punished with fine which may extend to fifty rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased and may be removed from the rail way by any railway servant

Notes—Removal is not justified where a passenger is travelling without ticket 68 Ind Cas 846, but see 1923 Lah 71 The word 'person includes railway offici als 44 I C 329 Selling fish in the delivery shed is a nuisance 25 C W N 603

Vide—1 N L R 139, 6 Lah L J 469

No conviction is possible unless actual alleged words amounting to obscene or abusive language are proved 26 Cr L J 417=85 Ind Cas 35=A I R 1925 Lah 151

Obstructing railway servant in his duty

121. If a person wilfully obstructs or impedes any railway servant in the discharge of his duty he shall be punished with fine which may extend to one hundred rupees

Notes—Where a right of way is claimed by [illegible] for obstructing the Railway Engineer in putting [illegible]

[illegible] t must be shown that the obstruc[illegible] vant in the discharge of his duties [illegible] =A I R 1925 Lah 650

Trespass and refusal to desist from trespass

122 (1) If a person unlawfully enters upon a railway, he shall be punished with fine which may extend to twenty rupees

(2) If a person so entering refuses to leave the railway on being requested to do so by any railway servant, or by any other person on behalf of the railway administration, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by such servant or other person

Notes—Section 47 has no bearing on the quest on and no bye law would have reference to a trespass by a member of the general public upon Railway lines as contemplated by this sect on 24 Ind Cas 348 Where the railway company is a servient owner t [illegible] werk. 22 B 525 (2) provides for c [illegible] Ind Cas 896, 22 [illegible]

secondly the entry should have been unlawful at the inception 103 Ind Cas 104= 23 Cr L J 648

Disobedience of omnibus drivers to directions of railway servants

123 If a driver or conductor of a tramcar omnibus carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police officer, he shall be punished with fine which may extend to twenty rupees

Opening or not properly shutting gates

124 In either of the following cases, namely —

(*a*) if a person knowing or having reason to believe that an engine or train is approaching along a railway, opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any animal, vehicle or other thing across the railway,

(*b*) if, in the absence of a gate keeper, a person omits to shut and fasten ... ehicle or other thing

... fifty rupees

Cattle trespass

125 (1) The owner or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle in addition to any amount which may have been recovered or may be recoverable under the Cattle trespass Act, 1871

(2) If any cattle are wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway, or for any other lawful purpose, the person in charge of the cattle or, at the option of the railway administration, the owner of the cattle shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle trespass Act, 1871

(3) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle trespass Act, 1871.

(4) The expression "public road in sections 11 and 26 of the Cattle trespass Act, 1871, shall be deemed to include a railway and any railway servant may exercise the powers conferred on officers of police by the former of those sections

(5) The word "cattle' has the same meaning in this section as in the Cattle trespass Act, 1871

Owner—The owner of cattle which have been allowed to stray upon a railway line in consequence of the negligence of their keeper is not liable to punishment 8 A L J 1249, 18 M 298

Maliciously wrecking or attempting to wreck a train

126 If a person unlawfully—

(*a*) puts or throws upon or across any railway any wood stone or other matter or thing, or

(*b*) takes up removes loosens or displaces any rail, sleeper or other matter or thing belonging to any railway, or

(*c*) turns, moves unlocks or diverts any points or other machinery belonging to any railway or

(*d*) makes or shows, or hides or removes, any signal or light upon or near to any railway, or

(*e*) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years

Notes—Placing a stone on the rail [illegible]
this section. Rat Un. Cr C 829 [illegible]
station is an offence under this sectic [illegible]
must be tried by the District Magist [illegible]
[illegible] s section is also punishable 1 Bom L R 682
[illegible] ead with s 126 (a) is not exclusively triable by a
[illegible] a competent Magistrate 43 B 888

127 If a person unlawfully throws or causes to fall or strikes at, against, into or upon any rolling stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years

Maliciously hurting or attempting to hurt persons travelling by railway

Notes—An offence under this se[illegible]
term which may extend to 10 years or [illegible]
by a [illegible]
the C [illegible]
cable [illegible]
under [illegible] arrested for former offence
are distinct offences and must be tried separately 29 C 385=6 C W N 468

128 If a person, by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling stock upon any railway, he shall be punished with imprisonment for a term which may extend to two years

Endangering safety of persons travelling by railway by wilful act or omission

129 If a person rashly or negligently does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both

Endangering safety of persons travelling by railway by rash or negligent act or omission

130 (1) If a minor under the age of twelve years is with respect to any railway guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of [illegible]

Special provision with respect to the commission by children of acts endangering safety of person travelling by railway

[illegible] be recoverable by the Court

(3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the Court, he shall be punished with fine which may extend to fifty rupees

Procedure

Arrest for offences against certain sections

131. (1) If a person commits any offence mentioned in sections 100, 101, 119, 120, 121, 126 127, 128 or 129 or in section 130, sub section (1), he may be arrested without warrant or other written authority by any railway servant or police-officer, or by any other person whom such servant or officer may call to his aid

(2) A person so arrested shall, with the least possable delay, be taken before a Magistrate having authority to try him or commit him for trial

Notes—*Vide* U B R (1897 1901) Vol I 54

Arrest of persons likely to abscond or unknown

132 (1) If a person commits any offence under this Act, other than an offence mentioned in the last foregoing section, *or fails or refuses to pay any excess charge or* other sum demanded under section 113, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any railway servant or police officer, or any other person whom such railway servant or police officer may call to his aid, may, without warrant or other written authority, arrest him

(2) The person arrested shall be released on his giving bail or, if his true name and address are ascertained, on his executing a bond without sureties for his appearance before a Magistrate when required

(3) If the person cannot give bail and his true name and address are not ascertained, he shall, with the least possible delay be taken before the nearest Magistrate having jurisdiction

(4) The provisions of Chapters XXXIX and XLII of the Code of Criminal Procedure, 1882, shall, so far as may be, apply to bail given and bonds executed under this section

Magistrates, having jurisdiction under Act

133 No Magistrate other than a Presidency Magistrate or than a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act

Notes—Under this section offences under the Act cannot be tried by Magistrates of third class U B R (1897 1901) Vol I, 374

Place of trial

134 (1) Any person committing any offence against this Act or any rule *thereunder shall be triable for such offence* in any place in which he may be or which the Local Government may notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force

(2) Every notification under sub section (1) shall be published in the local official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such railway stations as the Local Government may direct

CHAPTER X

Supplemental Provisions

Taxation of railways by local authorities —

135. Notwithstanding anything to the contrary in any enactment or in agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely —

(1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Governor General in Council has, by notification in the official Gazette, declared the railway administration to be liable to pay the tax

(2) While a notification of the Governor General in Council under clause (1) of this section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or, in lieu thereof such sum, if any, as an officer appointed in this behalf by the Governor General in Council may, having regard to all the circumstacces of the case, from time to time determine to be fair and reasonable

(3) The Governor General in Council may at any time revoke or vary a notification under clause (1) of this section

(4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control

(5) "Local authority" *in this section means a local authority as defined* in the General Clauses Act, 1887, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river

Restriction on execution against railway property

136 (1) None of the rolling stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of the traffic on its railway, or of its stations or work shops, shall be liable to be taken in execution of any decree or order of any Court "or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution,' *

[illegible] il

the authority of

decree or order

Railway servants to be public servants for the purposes of Chapter IX of the Indian Penal Code

137 (1) Every railway servant shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code

(2) In the definition of 'legal remuneration' in section 161 of that Code, the word 'Government" shall, for the purposes of sub section (1), be deemed to include any employer of a railway servant as such

(3) A railway servant shall not—

(*a*) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others any property put up to auction under section 55 or section 56, or

(*b*) in contravention of any direction of the railway administration in [illegible]

dian Penal Code, a

any of the pur

Procedure for summary deli very to railway administration of property detained by a railway servant

138 If a railway servant is discharged or suspended from his office or dies, absconds or absents himself, and he or his wife or widow, or any of his family or re presentatives refuses or neglects, after notice in writing for that purpose, to deliver up to the rail way administration, or to be a person appointed

* The words quoted have been added by Act IX of 1898 s 7

Magistrate of the first class may, on application made by or on behalf of the railway administration order any police officer, with proper assistance, to enter upon the building, and remove any person found therein and take possession thereof, or to take possession of the books, papers or other matters, and to deliver, the same to the railway administration or a person appointed by the railway administration in that behalf

Mode of signifying communications from the Governor General in Council

139. Any notice, determination direction, requisitions, appointment, expression of opinion, approval or sanction to be given or signified on the part of the Governor General in Council for any of the purposes of, or in relation to, this Act, or any of the powers of provisions therein contained, shall be sufficient and binding if in writing signed by a Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India or by any other officer or servant authorized to act on behalf of the Governor General in Council in respect of the matters to which the same may relate and the Governor General in Council shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid

Service of notices on railway administration

140 Any notice or other document required or authorized by this Act to be served on a railway administration may be [illegible]

[illegible] other document to the Manager or Agent, or

(b) by leaving it at his office, or

(c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office and registered under Part III of the Indian Post Office Act, 1866

Notes—The word 'may' in this section means "must" and [illegible] of a claim under s 77 for short delivery of goods must be served, when the railway is administered by a railway company on the Agent in India of the railway company [illegible] W N 450=35 C 194, 14 C W N [illegible] if sent by [illegible]

[illegible]

Service of notices by railway administrations

141. [illegible]

served—

(a) by delivering [illegible]

(b) by leaving it at [illegible]

(c) by forwarding [illegible]

his usual or last known [illegible] Indian Post Office Act, [illegible]

Notes—[illegible]

(*d*) pearls, precious stones, jewellery and trinkets,
(*e*) watches, clocks and timepieces of any description
(*f*) C
(*g*)
(*h*) and orders or other securities of payment of money
(*i*) maps writings and title deeds,
(*j*) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art,
(*k*) art pottery and all articles made of glass, china or marble,
(*l*) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials,
(*m*) shawls,
(*n*) lace and furs
(*o*) opium
(*p*) ivory ebony, coral and sandal wood
(*q*) musk sandal wood oil, and other essential oils used in the preparation of it orother perfume
(*r*) musical and scientific instruments
(*s*) any article of special value which the Governor General in Council may, by notification in the *Gazette of India*, add to this schedule

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THE INDIAN RAILWAY COMPANIES ACT, 1895

ACT NO X OF 1895

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 7TH MARCH, 1895

An Act to provide for the Payment by Railway Companies registered under the Indian Companies Act, 1882, of Interest out of capital during Construction.*

WHEREAS it is expedient to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882,* of interest out of capital during construction, It is hereby enacted as follows —

Title and extent

1 (1) This Act may be called the Indian Railway Companies Act, 1895

(2) It extends to the whole of British India,†

Definitions

2 In this Act, unless there is something repugnant in the subject or context,—

(1) "railway" means a railway as defined is section 3, clause (4), of the Indian Railways Act, 1890‡

(2) "the railway" means the railway in relation to the construction of which interest out of capital is permitted to be paid as hereinafter provided and

(3) "Railway Company" means a Company registered under the Indian Companies Act, 1882,* and formed for the purpose of making and working, or making or working a railway in India, whether alone or in conjunction with other purposes

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* Act VI of 1882
† Certain words after this repealed by Act 10 of 1914 have been omitted
‡ Act IX of 1890

Payment of interest out of capital

3. A Railway Company may pay interest on its paid up share of capital, for the period, and subject ditions and restrictions, in this section and may charge the same to capi the cost of construction of the railway :— ,

(1) Such interest shall be paid only for such period as shall by the Governor General in Council, and such period shall in beyond the close of the half year next after the half year dur railway shall be actually completed and opened for traffic

(2) No such payment shall be made unless the same is au Company's memorandum of association or by a special re Company

(3) No such payment whether authorized by the Company's of association or by special resolution as aforesaid, shall be m previous sanction of the Governor General in Council

(4) The amount so paid out of capital by way of interest in period, shall in no case exceed a sum which shall, together with of the railway during such period, make up the rate of four per

(5) No such payment of interest shall be made until Company has satisfied the Governor General in Council t least of its share capital, in respect whereof interest is to be actually issued and accepted and is held by shareholders who, tatives, are legally liable for the same

(6) No such interest shall accrue in favour of any time during which any call on any of his shares is in ar

(7) The payment of such interest shall not oper amount paid up on the shares in respect of which it is

Provisions of section 3 applicable to additional share capital for extensions

4 A railway in course of construction and by a Railway Co way of extension by such Co railway of this Act, and all the provisions such railway, and to the s truction

Notice in prospe other documents

5 When a Rail

in every cer

6 W

a

(*d*) pearls, precious stones, jewellery and trinkets,
(*e*) watches, clocks and timepieces of any description;
(*f*) [illegible]
(*g*) [illegible]
(*h*) [illegible] and orders or other securities [illegible];
(*i*) maps, writings and title deeds,
(*j*) paintings, engravings, lithographs, photographs, carvings sculpture and other works of art
(*k*) art pottery and all articles made of glass china or marble,
(*l*) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials
(*m*) shawls,
(*n*) lace and furs,
(*o*) opium
(*p*) ivory ebony, coral and sandal wood
(*q*) musk sandal wood oil, and other essential oils used in the preparation of it or other perfume
(*r*) musical and scientific instruments
(*s*) any article of special value which the Governor General in Council may by notification in the *Gazette of India*, add to this schedule

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THE INDIAN RAILWAY COMPANIES ACT, 1895

ACT NO X OF 1895

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 7TH MARCH 1895

An Act to provide for the Payment by Railway Companies registered under the Indian Companies Act, 1882, of Interest out of capital during Construction.*

WHEREAS it is expedient to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882,* of interest out of capital during construction, It is hereby enacted as follows —

Title and extent

1 (1) This Act may be called the Indian Railway Companies Act, 1895

(2) It extends to the whole of British India,†

Definitions

2 In this Act, unless there is something repugnant in the subject or context,—

(1) "railway" means a railway as defined is section 3, clause (4), of the Indian Railways Act, 1890‡

(2) "the railway" means the railway in relation to the construction of which interest out of capital is permitted to be paid as hereinafter provided. and

(3) "Railway Company" means a Company registered under the Indian Companies Act, 1882,* and formed for the purpose of making and working, or making or working a railway in India, whether alone or in conjunction with other purposes

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* Act VI of 1882
† Certain words after this repealed by Act 10 of 1914 have been omitted
‡ Act IX of 1890

Payment of interest out of capital

3. A Railway Company may pay interest on its paid up share capital out of capital, for the period and subject to the conditions and restrictions, in this section mentioned and may charge the same to capital as part of the cost of construction of the railway :—

(1) Such interest shall be paid only for such period as shall be determined by the Governor General in Council and such period shall in no case extend beyond the close of the half year next after the half year during which the railway shall be actually completed and opened for traffic.

(2) No such payment shall be made unless the same is authorized by the Company's *memorandum of association or by a special resolution of the* Company

(3) No such payment whether authorized by the Company's memorandum of association or by special resolution as aforesaid, shall be made without the previous sanction of the Governor General in Council

(4) The amount so paid out of capital by way of interest in respect of any period, shall in no case exceed a sum which shall, together with the net earnings of the railway during such period, make up the rate of four per cent per annum

(5) No such payment of interest shall be made until such Railway Company has satisfied the Governor General in Council that two thirds at least of its share capital, in respect whereof interest is to be so paid has been actually issued and accepted and is held by shareholders who, or whose representatives, are legally liable for the same

(6) No such interest shall accrue in favour of any shareholder for any time during which any call on any of his shares is in arrear

(7) The payment of such interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid

Provisions of section 3 applicable to additional share capital for extensions

4 A railway in course of construction and intended to be made or worked by a Railway Company in addition to or by way of extension of any railway owned or worked by such Company shall be deemed to be the railway of such Company for the purposes of this Act, and all the provisions of the last preceding section shall apply to such railway, and to the share capital issued for the purpose of its construction

Notice in prospectus and *other documents*

5 When a Railway Company has power to pay interest under this Act, notice to that effect shall be given in every prospectus, advertisement or other document inviting subscriptions for shares therein, and in every certificate of such shares

Accounts

6 When any interest has been paid by a Railway Company under this Act the annual or other accounts of such Company shall show the amount on which and the rate at which, interest has been so paid

Construction of borrowing powers

7. If by any memorandum of association articles of association or other document any power of borrowing money is conferred on a Railway Company or on its Directors, with or without the sanction of any meeting and if such power o[illegible]
proportion to the capital of s[illegible]
or to be applied in payment
of ascertaining the extent of
capital of such Company

THE INDIAN REGISTRATION ACT, 1908.*

ACT NO. XVI OF 1908.

RECEIVED THE G G 'S ASSENT ON THE 18TH DECEMBER 1908

An Act to consolidate the enactments relating to the Registration of Documents

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents, It is hereby enacted as follows —

PART I

PRELIMINARY

Short title extent and commencement

1 (1) This Act may be called the Indian Registration Act, 1908

(2) It extends to the whole of British India, except such districts or tracts of country as the Local Government may † exclude from its operation

(3) It shall come into force on the first day of January, 1909

Notes—F[illegible]
and not the [illegible]
L R 55, 6 C [illegible]
person dealin[illegible]
with confidenc[illegible]
account of al[illegible]
actual notice of some unregistered transaction which may be valid apart from registration. The object of registration is to protect against prior transactions 25 C W N 49=47 I A 239 (P C)

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) "addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native of India his caste (if any) and his father s name or where he is usually described as the son of his mother, then his mother s name

(2) "book' includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book

(3) "district' and 'sub district', respectively, mean a district and sub district formed under this Act

(4) "District Court includes the High Court in its ordinary original civil jurisdiction :

(5) 'endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act

(6) "immovable property' includes land, buildings, hereditary allowances, rights to ways, lights ferries fisheries or any other benefit to arise out of land and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops nor grass

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* A[illegible] C P Act II of 1916

[illegible] Reg 2 of 1913, s 3 [illegible] in the Angul district Reg 3 of 1913, s 3

In the Pargana of Manpur, Reg 2 of 1926 s 2 in Panth Piploda, Reg I of 1929

† Certain words after this repealed by Act 38 of 1920 have been omitted

(7) "lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease

(8) "minor" means a person who according to the personal law to which he is subject has not attained majority

(9) "movable property" includes standing timber growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property and

(10) "representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot

Notes —The definitions in this Act are expressly given for the purposes of this Act and ought not to govern the decision of questions raised under other Acts 4 C 665=2 C L R 526

Clause (6) —A tree which is essentially a timber tree intended to be cut down and used as timbers is not immovable property for the purposes of the Act 93 Ind Cas 358 A right to fruits to be produced is not a benefit arising out of land 72 P R 1884, see also 47A 738=1925 All 411 A right to enter upon a given piece of land is not benefit arising out of land 27 A 462 A right of way is immovable property 20 C W N 1158 Future rents payable in respect of lands are immovable property 20 M L J 966

Clause (7) —A document whereby the executant agrees to occupy the house on a monthly rent is a lease 105 Ind Cas 43, see also 102 Ind Cas 105 It is only when a present demise is contemplated that an agreement to execute a lease would amount to an agreement to lease 10 Ind Cas 71 see also 97 Ind Cas, 553, 21 Bom L R 1130=54 Ind Cas 134 An agreement that upon the happening of a ... not an agreement to lease 17 A L J ... ng registration must be a document which ... property, 44 M 399=62 Ind Cas 345=44

Clause (9) —A mango tree is a timber 1 Bom L R 489=24 B 31 The gum of trees is movable property 5 M L J 27 Trees standing on lands are movable properties 20 M 58 (F B) A decree for sale on a mortgage is not immovable property 13 A 89

PART II

OF THE REGISTRATION ESTABLISHMENT

3 (1) The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government

Inspector General of Registration

Provided that the Local Government may instead of making such appointment direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers and within such local limits as the Local Government appoints in this behalf

(2) Any Inspector General may hold simultaneously any other office under Government

Notes —This section relates to the appointment of Inspector General of Registration by the Local Government The powers and duties of an Inspector General of Registration may be imposed on any other officer or officers by the Local Government

4 (1) The Governor of Bombay in Council may also * appoint an officer to be the Branch Inspector General of Sindh, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred

Branch Inspector General of Sindh

(2) The Branch Inspector General of Sindh may hold simultaneously any other office under Government

* Certain words after this repealed by Act 38 of 1920 have been omitted

Notes —This provision has been specially made for Sindh

Districts and sub districts

5 (1) For the purposes of this Act, the Local Government shall form districts and sub districts and shall prescribe, and may alter, the limits of such districts and sub districts

(2) The districts and sub districts formed under this section, together with the limits thereof and every alteration of such limits, shall be notified in the local official gazette

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned

Notes —The divisions of the Province into districts and sub districts are only for the purpose of this Act

Registrars and Sub Registrars

6 The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub Registrars of the several sub districts, formed as aforesaid respectively

* provided that the Local Government may delegate, subject to such restrictions and conditions as it thinks fit, to the Inspector General of Registration

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Offices of Registrar and Sub Registrar

7 (1) The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub district an office or offices to be styled the office of the Sub Registrar or the offices of the Joint Sub Registrars

(2) The Local Government may amalgamate with any office of a Registrar *any office of a Sub Registrar subordinate to such Registrar, and may authorise* any Sub-Registrar whose office has been so amalgamated to exercise and perform in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate

Sub Registrar to hear Act

amalgamated with that of Registrar, the Sub-Registrar may be authorised to exercise and perform, in addition to his powers and duties all or any of the powers and duties of the Registrar to whom he is subordinate 1924 Cal 348, see also 3 C L J 165

Inspectors of Registration offices

8 (1) The Local Government may also appoint officers to be called *Inspectors of Registration offices, and may prescribe* the duties of such officers

(2) Every such Inspector shall be subordinate to the Inspector General

9 [Military cantonments may be declared sub districts or districts] —*Repealed by Act X of 1927*

Absence of Registrar or vacancy in his office

10 (1) When any Registrar other than the Registrar of a district including a Presidency town is absent otherwise than on duty in his district or when his office is temporarily vacant, any person whom the Inspector General appoints in this behalf, or in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction ... be the Registrar during such absence

ancy

ing a Presidency town is absent otherwise than on duty in his district, or when his office is temporarily vacant,

* Added by Act IV of 1914

any person whom the Inspector General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of Registrar on duty in his district

11. When any Registrar is absent from his office on duty in his district, he may appoint any Sub Registrar or other person in his district to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72

Absence of Sub-Registrar or vacancy in his office

12 When any Sub Registrar is absent or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub Registrar during such absence, or until the "vacancy is filled up"*

Report of certain appointments and suspension and removal and dismissal of officers

13 (1) "All appointments made by the Inspector General under section 6 and"* all appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector General

(2) Such report shall be either special or general, as the Local Government directs

(3) The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead "and the Inspector General of Registration may, subject to such conditions and restrictions as the Local Government may impose, exercise the like power in the case of Sub-Registrars appointed by him"*

Remuneration and establishments of registering officers

14. (1) † The Local Government may assign such salaries as such Government deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries

(2) The Local Govenment may allow proper establishments for the several offices under this Act

Seal of registering officers

15 The several Registrars and Sub Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs —"The seal of the Registrar (*or* of the Sub-Registrar) of ".

Register books and fire proof boxes

16 (1) The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title page by the officer by whom such books are issued

(3) The Local Government shall supply the office of every Registrar with a fire proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such districts

PART III

OF REGISTRABLE DOCUMENTS

Documents of which registration is compulsory

17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which and if they have been executed on or after the date on which, Act No XVI of 1864, or the

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* The words within quotations have been substituted by Act 4 of 1914

† Certain words before this repealed by Act 38 of 1920 have been omitted

[illegible] tration Act, 1871, or the
[illegible] omes into force, namely —

(*b*) other non testamentary instruments which purport or operate to create, declare, assign limit or extinguish, whether *in present or in future any right*, title or interest whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property ,

(*c*) non testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation declaration assignment, limitation or extinction of any such right, title or interest , and

(*d*) leases of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent ,

* (*e*) non testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create declare, assign limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property '

Provided that the Local Government may, by order published in the local official gazette exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees

(2) Nothing in clauses (*b*) and (*c*) of sub section (1) applies to—

(i) any composition deed , or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consists in whole or in part of immovable property , or

(iii) any *debenture issued* by *any such* Company and not creating, declaring assigning limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures , or

(iv any endorsement upon or transfer of any debenture issued by any such Company , or

(v) any document not itself creating declaring, assigning limiting or extinguishing any right title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest , or

(vi) any decree or order of a Court "except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceedings ' ,†

(vii) any grant of immovable property by Government , or

(viii) any instument of partition made by a Revenue officer ; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883 , or

(x) any order granting a loan under the Agriculturist's Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act , or

(xi) any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for

* Added by Act XXI of 1929
† Substituted by Act XXI of 1929

payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage ; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer.

"*Explanation* —A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money"*

(3) Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a Will, shall also be registered.

Notes —Neither this section nor the corresponding sections of the previous Act have the effect of rendering a document not compulsorily registrable under the Act of 1864 ...

sharers on a partition, the list though signed by the parties is a mere memorandum and does not require registration 37 C W N 112=A I R 1934 Cal 474=144 Ind Cas 868

Sub-section (1) (a) —The expression "Instrument of gift of immovable property" means an instrument or deed which creates, makes or completes the gift, thereby transferring the ownership of the property of the executant to the person in whose favour it is executed 44 C L J 480=A I R 1927 Cal 197, see also A I R 1933 Pesh 67

Sub-section (1) (b) —For the purposes of this Act the value of an interest that ... oned in the sale deed by the parties thereto ... B 353, 2 B 97 The word "declare" in ... other words "create", "assign or limit" ... 1933 Rang 252=11 Rang 481 A document ... property has already been partitioned and ... share allotted to him at partition ... A deed altering merely the terms ... a transaction creating or declaring ... is clause 50 Ind Cas 647 Non testamentary instrument which clearl... right and interest of certain persons i... Rs 100 in the absence of registration, ... not be relied upon for establishing any ... The words "present or future vested or contingent" point not to the value of its ascertainment, but to right or interest in the land, which is to be created as a security 1 M 378 An agreement relating to immovable property need not be registered 6 M L T 192=3 Ind Cas 223, see also 174 P L R 1905, 23 B 602=1 Bom L R 61, 15 Ind Cas 28=29 P L R 1912=231 P W R 1912 A document entitling a person to redeem a mortgage of immovable property on payment of money creates an interest in immovable property 27 M 348 In a mortgage deed the value of interest is determined by the principal amount secured by the mortgage 29 P R 1880, 12 C L R 444 A mortgage bond which purports to be for Rs 90, with interest at 2 p. c per mensem, repayable after 9 months does not require registration 13 C L R 256, see also 15 W R 331, 12 C L R 444, 4 C 61, 5 M 119, A W N 1882, 209, 2 A 216 When a charge for a sum exceeding rupees one hundred ... the document requires registration 190 ... release executed in writing by a mortgage... the properties mortgaged, is inoperative ... to be extinguished by it is of the value of ... 551=3 C L J 576, but see 27 A 305= ... does not come within the purview of this ... A I R 1933 Rang 407=11 Rang 481 A document acknowledging the repayment

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* Added by Act 2 of 1927

of consideration money advanced upon a mortgage need not be registered 20 W R 334 ; but see 5 M 115, 6 A 335 A receipt for part payment of mortgaged money which does not purport to extinguish the mortgage is not compulsorily registrable 91 P L. R 1904=39 P R 1904 An unregistered agreement relinquishing immovable property and which had not been acted upon by the parties is inadmissible in evidence 103 Ind Cas 369 A receipt for a certain amount in lieu of an oral sale of certain land is compulsorily registrable 104 Ind Cas 585 A compromise filed in a mutation case containing a recital of the terms agreed upon under a family arrangement need not be registered 95 Ind Cas 623 A release of debt may be effected by parol But if it is in writing it should be registered 42 C L J 582=A I. R 1926 Cal ... 97 Ind Cas 332 ... ered can not be refe ... con tained therein ... e of legal relation t ... and not a mere stat ... here a ' trusteenama ... the ... Registration Act and does not require ... 329 (P C) A deed of partition of joint ... M L J 382 But a memorandum in an ... ady taken place does not require registra ... Cas 182 If a consent decree incorporates ... of the suit, it is not valid as part of a judicial proceeding but requires registration 48 C 1059=66 Ind Cas 705 Compromise petition filed in Court does not require registration A I R 1933 Pat 306=12 P 259

Sub section (1) (c)—When the result of an agreement is to extinguish the mortgage debt and to co ... *document the agreemen* ... also A I R 1934 Mad ... of possession of land all ... this clause 45 Ind Cas 854

Sub section (1) (d)—A lease on which a yearly rent is reserved as contemplated by this clause must be one which on proper construction of it would create a tenancy from year to year 9 C P L R 57 ; see also 9 C P L R 88 ; 8 Bom L R 580, 21 M 109 A lease for one year, which provides that the tenant should have the option of a renewal for a second year, is not a lease for a term exceeding one year 17 C 584 The rent in the proviso includes rents payable in kind 15 Ind Cas 682

An agreement to lease, which does not import a present demise or the creation of an immediate interest, is not compulsorily registrable. 21 Bom L R 1130= 54 Ind Cas 134 An ... event a lease will be g ... 2 (7) and does not ... these sections a lease ... and operates as a lease *in presenti* 37 C 808, 17 A L J 1117 P. C. A document which embodies a contract for variation of rent payable in respect of a lease is in essence a lease and is compulsorily registrable 27 C L J 107=41 Ind Cas 804 A *solenama* whereby a suit was settled and which was intended to operate as the *grant of a tenancy to take effect at once was held to be inadmissible for want of* registration 51 C W N 1099 The word "year" in this clause means a year according to the Gregorian Calendar 105 Ind Cas 43 In a lease determinable at any time at the will of the landlord the mere recital of an annual rate of rent does not constitute it a lease reserving a yearly rent within the meaning of s 17 (1) (d) 92 Ind Cas 526 (2) A lease for life is a lease for term exceeding one year but even if it be considered a lease for an indefinite period, it is at any rate a lease from year to year requiring registration L R. 3 A 537

Sub section 2 (5)—When an agreement is entered into for sale of certain ... the ... it ... of

[illegible] 28 Bom L R [illegible] Bom L [illegible]

interest in immovable property but that it must not itself create, etc, any right title or interest 39 M L J 382

Sub section 2 (6) —A compromis [illegible] requires registration 31 P R 1919— [illegible] disputes is an award and it does not re [illegible] an award has been acted upon by the [illegible] M W N 134=43 Ind Cas 697; 46 Ind Cas 358=(1918) Pat 193; 45 Ind Cas 331, 43 Ind Cas 282=3 Pat L J 43, 43 Ind Cas 26, 98 Ind Cas 1069, 99 Ind Cas 1002, 54 Ind Cas 325, 24 C W N 328, 43 M 688

A compromise entered into between landlord and tenant but not incorporated in the decree of Court which on a fair constr [illegible] lease and not merely an agreement to create [illegible] Ind Cas 638=4 Pat L W 247 The word 'awar [illegible] Act is not limited in its application to awards [illegible] consent of the parties 101 Ind Cas 351=29 Bom L R 297

Sub section (2) cl 11 —An agreement executed by the mortgagee relinquishing [illegible]

[illegible] 37 C W N 424

Sub section (2) expl —A contract of sale of immovable property though it contains a recital of payment of a part of purchase money of more than Rs 1001—to the proposed vendee, does not require registration 49 A 806=1927 All 287

Sub section (3) [illegible] on the death of the pe [illegible] requires to be registe[illegible] Cas 38, 44 M 733 [illegible] outside British India [illegible] 288 An authority to [illegible] M W N 684

Documents of which registration is optional

18 Any of the following documents may be registered under this Act, namely —

(*a*) instruments (other than instruments of gift and Wills) which purport or operate to create declare, assign, limit or extinguish whether in present or in future any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property

(*b*) instruments acknowledging the receipt or payment of any consideration on account of the creation, declartion, assignment, limitation or extinction of any such right, title or interest,

(*c*) leases of immovable property for any term not exceeding one year, and leases exempted under section 17,

(*d*) instruments (other than Wills) which purport, or operate to create, declare, assign limit or extinguish any right, title or interest to or in movable property,

(*e*) Wills; and

(*f*) all other documents not required by section 17 to be registered

Notes —Under ss 18 (a) and 50, a registered sale deed prevails over prior unregistered mortgage 4 M L T 64

Documents in language not understood by registering officer

19 If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy

Documents containing interlineations, blanks, erasures or alterations

20 (1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration

Notes —If the sub registrar merely refused to take up the document for registration, no appeal will lie to the Registrar against this order M W N 1912, 452=15 Ind Cas 370

Description of property and maps or plants

21 (1) No non testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey

(4) No non testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts

Notes —The registration of a document is not vitiated, merely by an error in the description of the property if the description is sufficient to identify it 11 A L J 241=18 Ind Cas 923=35 A 250, 10 M L J 104, 102 Ind. Cas 360 The provisions of this section are imperative, and not merely directory 6 A L J 627=6 M L T 5=3 Ind Cas 506=31 A 523 The registration of a document without the map referred to therein is ineffective 18 C 556, 43 Ind Cas 455, see also 41 C 972, 1925 Bom 34

Description of houses and land by reference to Government maps or surveys

22 (1) Where it is, in the opinion of the Local Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the Local Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described

(2) Save as otherwise provided by any rule made under sub-section (1) failure to comply with the provisions of section 21, sub section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to indentify that property

... "family property is sufficient to ... nless the rule framed under clause ... scribed in a particular way (as by

giving survey numbers) also says that the document shall not be registered unless it is so described the document may be registered provided the description of the property is sufficient to indentify the property referred to 99 Ind Cas 846=25 L. W. 429=A I R 1927 Mad 369=52 M, L J 140=38 M L T (H C) 10

PART IV.

OF THE TIME OF PRESENTATION

Time for presenting documents

23 Subject to the provisions contained in sections 24, 25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final

Notes—The registration of a document other than a Will presented beyond the period prescribed by sections 23 to 26 of the Registration Act is invalid It is not mere irregularity in procedure cured by s 87 43 M. 288=38 M L J. 149 Time cannot be extended by agreement of parties 1923 Nag 76

Re registration of certain documents

"23A *Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re registration in the office of the Registrar of the district in which the document was originally registered , and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to

accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration

"Provided that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid '

Documents executed by several persons at different times

24 Where there are several persons executing a document at different times, such document may be presented for registration and re registration within four months from the date of each execution.

Notes—The registration of a document other than a Will presented beyond the period prescribed by ss 23 to 26 of the Registration Act is invalid It is not a mere irregularity in procedure cured by s 87 of the Act. 43 M 288=38 M L J 149

Provision where delay in presentation is unavoidable

25 (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time

* Section 23 A has been inserted by Act XV of 1917

19 If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy

Documents in language not understood by registering officer

20 (1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank eras re or al e a n app a s el g the persons 1 their signatu blank, erasure or alteration

Documents containing interlineations, blanks, erasures or alterations

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation blank, erasure or alteration

Notes —If the sub registrar merely refused to take up the document for registration, no appeal will lie to the Registrar against this order M W N 1912 452=15 Ind Cas 370

21 (1) No non testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same

Description of property and maps or plants

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered

(3) Other houses and lands shall be described by their name, if any and as being in the territorial division in which they are situate, and by their superficial contents the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey

(4) No non testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan or in case such property is situate in several districts by such number of true copies of the map or plan as are equal to the number of such districts

Notes —The registration of a document is not vitiated, merely by an error in the description of the property if the description is sufficient to identify it 11 A L J 241=18 Ind Cas 923=35 A 250, 10 M L J 104 102 Ind Cas 360 The provisions of this section are imperative, and not merely directory 6 A L J 627=6 M L T 5=3 Ind Cas 506=31 A 523 The registration of a document without the map referred to therein is ineffective 18 C 556, 43 Ind Cas 455, see also 41 C 972, 1925 Bom 34

22 (1) Where it is, in the opinion of the Local Government practicable to describe houses not being houses in towns and lands by reference to a Government map or survey, the Local Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described

Description of houses and land by reference to Government maps or surveys

(2) Save as otherwise provided by any rule made under sub-section (1) failure to cc r 21 s h 1 1
(3), shall n
property to

Notes —The description of the properties as family property is sufficient 10 M L J 104 The meaning of s 22 (2) is that unless the rule framed under clause (1) to the effect that the property should be described in a particular way (as by

giving survey numbers) also says that the document shall not be registered unless it is so described the document may be registered provided the description of the property is sufficient to indentify the property referred to 99 Ind Cas 846=25 L. W. 429=A I R 1927 Mad 369=52 M. L J 140=38 M L T. (H C) 10

PART IV.

OF THE TIME OF PRESENTATION

Time for presenting documents

23 Subject to the provisions contained in sections 24, 25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.

Provided that a copy of a decree or order may be presented within four *months from the day on which the decree or order was made, or, where it is* appealable, within four months from the day on which it becomes final

Notes —The registration of a document other than a Will presented beyond the period prescribed by sections 23 to 26 of the Registration Act is invalid It is not mere irregularity in procedure cured by s 87 43 M. 288=38 M L J. 149 Time cannot be extended by agreement of parties 1923 Nag. 76

Re registration of certain documents

"**23A** *Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re registration in the office of the Registrar of the district in which the document was originally registered, and upon the Registrar being satisfied that the [illegible]

duly [illegible]

any

pre[illegible]

dance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid"

Documents executed by several persons at different times

24 Where there are several persons executing a document at different times, such document may be presented for registration and re registration within four months from the date of each execution.

Notes —The registration of a document other than a Will presented beyond the period prescribed by ss 23 to 26 of the Registration Act is invalid It is not a mere irregularity in procedure cured by s 87 of the Act. 43 M 288=38 M L J 149

Provision where delay in presentation is unavoidable

25 (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time

* Section 23 A has been inserted by Act XV of 1917

of the document to the Registrar for registration no matter by whom the physical act is performed the document is presented 34 A 355=14 Ind Cas 812 Where it is shown that perior to the registration of the document by the duly authorized official a person who is competent to present the document for registration, was present before the official resulting to the registration the requirements of the act are sufficiently complied with 11 A L J 99=35 A 134=18 Ind Cas 697, 49 Ind Cas 375, see also 10 A L J 510=17 Ind Cas 465=35 A 72, 9 A L J 848=13 Ind Cas 961 The agent of the person mentioned in this section if he is not duly authorized by the power of attorney, such as s 33 declares shall alone be recognized s not a person legally entitled to present the document for registration or a person having title to move the Registrar 6 O C 9 The terms of ss 32 and 33 are imperative and proper presentation by an authorized agent is an indispensable foundation of the registering officer s jurisdiction A W N 1909 195=3 A L J 743, 5 C W N 177=28 I A 15=23 A 232 P C Ss 32 and 33 of the Act relating to the presentation of documents for registration are imperative and their provisions must be strictly followed 58 Ind Cas 333 The term representatives in th s section refers to the legal representatives 49 I A 395 Presentation by a minor claiming under it is valid presentation A I R 1933 Mad 407=64 M L J 449=142 Ind Cas 646 Vendee to present the document if payment is to be made at registration 66 M L J 255=59 C L J 139=A I R 1934 P C 68

Power of attorney recognizable for purposes of section 32

33 (1) For the purposes of section 32, the following powers of attorney shall alone be recognized, namely —

(*a*) if the principal at the time of executing the power of attorney resides in any part of British India in which this Act is for the time being in force, a power of attorney executed before and authenticated by the Registrar or Sub Registrar within whose district or sub district the principal resides,

(*b*) if the principal at the time aforesaid resides in any other part of British India a power of attorney executed before and authenticated by any Magistrate,

(*c*) if the principal at the time aforesaid does not reside in British India, a power of attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate British Consul or Vice Consul, or representative of His Majesty or of the Government of India

Provided that the following persons shall not be required to attend at any registration office or Court for the purpose of executing any such power of attorney as is mentioned is clauses (*a*) and (*b*) of this s ction, namely —

(i) persons who by reason of bodily infirmity are unable, without risk or serious inconvenience so to attend,

(ii) persons who are in jail under civil or criminal process, and

(iii) persons exempt by law from personal appearance in Court

(2) In the case of every such person the Registrar or Sub Registrar or Magistrate as the case may be, if satisfied that the power of attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid

(3) To obtain evidence as to the voluntary nature of the execut on the Registrar or Sub Registrar or Magistrate may either himself go to the house of the person purporting to be the principal or to the jail in which he is confined, and examine him, or issue a commission for his examination

(4) Ary power of attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf

Notes —The presentation of a document for registration by an agent duly appointed by a power of attorney is a valid presentation 32 A 179=7 A L J 157=5 Ind

Cas 766 For a power of attorney for registration of a document in a registration
person executing a docu-
ıder a power of attorney
ıs competent to appear
ore the Registrar of Assu-
rances 51 B 971 = 29 Bom L R 1124 = 103 Ind Cas 906

34 (1) Subject to the provisions contained in this Part and in sections 41 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons

Enquiry before registration by registering officer

their representatives,
ie registering officer
24, 25 and 26

Provided that, if, owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered

(2) Appearances under sub-section (1) may be simultaneous or at different times

(3) The registering officer shall thereupon—

(*a*) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(*b*) satisfy himself as to the indentity of the persons appearing before him and alleging that they have executed the document, and

(*c*) in the case of any person appearing as a representative assign or agent, satisfy himself of the right of such persons so to appear

section (1) may
the Registrar to

ders

Notes —When the Registrar refuses registration of a document under s 34 of the Act on the ground of delay, a suit to compel the registration of the original document will lie 6 M L J 263, 17 C 750 Failure to conform to the provision of this section will not render the registration invalid 77 P R 1890, 11 Ind Cas 925 = 14 O C 207 Where a matter is referred under s 34 (4) and proviso to s 33 (1) to the Registrar he may direct the registration if he is of opinion that the delay was due to unavoidable accident and urgent necessity 86 Ind Cas 797 = A I R 1925 Mad 619

35 (1) (*a*) If all the persons executing the document appear personally before the registering officer and are personally known to him or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

Procedure on admission and denial of execution respectively

(*b*) If in the case of any person appearing by a representative, assign or

sentative or

sections 58 to 61, inclusive

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office

(3) (*a*) If any person by whom the document purports to be executed denied its execution, or

(*b*) if any such person appears to the registering officer to be a minor, and idiot or a lunatic, or

(*c*) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead

Provided that, where such officer is a Registrar he shall follow the procedure prescribed in Part XII

"Provided further that the Local Government may, by notification in the local official gazette, declare that any Sub Registrar named in the notification shall, in respect of documents the execution of which is denied be deemed to be a Registrar for the purposes of this sub-section and of Part XII' *

Notes —The object of this section is that if the registration authority refuses to ... *the question of minority may* ... termined 8 C 967=11 C L R ... ubtedly seem to require the re ...

J 318

PART VII

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES

Procedure where appearance of executant or witness is desired

36 If any person presenting any document for registration or claiming under any document, which is capable of being so presented desires the appearance of any person whose presence or testimony is necessary for the registration of such document the registering officer may in his discretion call upon such officer or Court as the Local Government directs in this behalf to issue a summons requiring him to appear at the registration office either in person or by duly authorized agent as in the summons may be mentioned and at a time named therein

Officer or Court to issue and cause service of summons

37 The officer or Court, upon receipt of the peon s fee payable in such cases shall issue the summons accordingly, and cause it to be served upon the persons whose appearance is so required

Persons exempt from appearance at registration office

38 (1) (*a*) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration office, or

(*b*) a person in jail under civil or criminal process, or

(*c*) persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration office

shall not be required so to appear

(2) In the case of every such person, the registering officer shall either himself go to the house of such person or to the jail in which he is confined and examine him or issue a commission for his examination

Notes —A Registrar cannot issue commission to h s clerk to enquire of the executant if she admitted execution 3 Rang 398

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* Inserted by Act 13 of 1926

39 The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid, and *mutatis mutandis*, apply to any summons or commission issued and any person summoned to appear under the provisions of this Act

Law as to summonses, commissions and witnesses

PART VIII

Of presenting Will and Authorities to adopt

40 (1) The testator, or after his death any person claiming as executor or otherwise under a Will, may present it to any Registrar or Sub-Registrar for registration

Persons entitled to present Wills and authorities to adopt

(2) The donor, or after his death, the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub Registrar for registration

Notes —Person presenting for registration must be one mentionod in s 40 (2) 30 C W N 193 (P C)

41 (1) A Will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other decument

Registration of Wills and authorities to adopt

(2) A Will or an authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

(*a*) that the Will or authority was executed by the testator or donor, as the case may be,

(*b*) that the testator or donor is dead, and

(*c*) that the person presenting the Will or authority is under section 40, entitled to present the same

Notes —An authority to adopt not registered at the instance of any of the persons mentioned in s 40 (2) is invalid 30 C W N 193 (P C), 42 C L J 38=52 I A 305=48 M 614

PART IX

Of the Deposit of Wills

42 Any testator may, either personally or by duly authorized agent, deposit with any Registrar his Will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document

Deposit of Wills

43 (1) On receiving such cover, the Registrar if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register book No 5, the superscription aforesaid, and shall note in the same book, and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover

Procedure on deposit of Wills

(2) The Registrar shall then place and retain the sealed cover in his fire proof box

44 If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorized agent, to the Registrar who holds it in deposit and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly

Withdrawal of sealed cover deposited under section 42

Proceedings on death of depositor

45 (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No 3

(2) When such copy has been made, the Registrar shall redeposit the original Will

Saving of certain enactments and powers of Courts

46 (1) Nothing hereinbefore contained shall affect the provisions of section 259 of the Indian Succession Act, 1865,* or of section 81 of the Probate and Administration Act, 1881,† or the power of any Court by order to compel the production of any Will

(2) When any such order is made, the Registar shall, unless the Will has been already copied under section 45, open the cover and cause the Will to be copied into his Book No 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid

PART X

OF THE EFFECTS OF REGISTRATION AND NON REGISTRATION

Time from which registered document operates

47 A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration

[illegible]

document as against unregistered document takes effect from the moment of execution 6 C P L R 112 In cases where a document has been executed and registered and the question arises as to the date it bears there can be little doubt that the presumption is that the document was executed on the date it bears 96 Ind Cas 26=A I R [illegible]
from the date of its re[illegible]
deed executed before b[illegible]
by the doctrine of *lis* [illegible]
from the date of execu[illegible]
Pat L T 95=5 Pat L J 715=59 Ind Cas 290

Registered documents relating to property when to take effect against oral agreements

48 All non testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession, "and the same constitutes a valid transfer under any law for the time being in force

Provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage deed subsequently executed and registered which relates to the same property ‡

[illegible]

* Act X of 1865 † Act V of 1881
‡ Added by Act XXI of 1929

Effect of non registration of documents required to be registered

49 No document required by section 17 "or by any provision of the Transfer of Property Act, 1882 * to be registered shall—

(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or
(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered

"Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a c
under Chapter II of the Specific Reli
performance of a contract for the pu
Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument' *

to prove a collateral fact The fact must be independent of or separate from the purpose to effect which the law requires registrat on 15 N. L R 31 =48 Ind Cas 923, 61 P L R 919, 44 Ind Cas 837, see also 45 A 565, but see 44 Ind Cas 889 Though a certain lease may be inadm ssible in proof of its terms as being unregistered it may still be used to prove the relationship of landlord and tenant 45 Ind Cas 217 Where a document creating a charge over movables and immovables is not registered it will only deprive the promise of his right in the immovable properties and w ll not affect his rights in the movable property 47 Ind Cas 563 see also 44 Ind Cas 91 If there was an oral compromise and its terms were reduced to writing and if the writing was not registered Court will not be justified in ignoring the written compromise and falling back on the oral one 102 Ind Cas 8=A I R 1927 All 587 Where a mortgage is not effected by a registered deed, it is invalid but nevertheless the recitals therein are admissible in evidence for the purpose of explaining the nature and character of the possession of the mortgagee 100 Ind Cas 396=A I R 1927 All 311 An unregistered document which is not a demise at all but is merely in form and in substance a letter of instruction by the defendant to the plaintiff s solicitor asking him to draw up a lease containing certain terms which had been agreed between the parties

64 Ind Cas 906

* Added by Act XXI of 1929

50 (1) Every document of the kinds mentioned in clauses (*a*) (*b*), (*c*) and (*d*) of section 17, sub-section (1), and clauses (*a*) and (*b*) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not

Certain registered documents relating to land to take effect against unregistered documents

(2) Nothing in sub section (1) applies to leases exempted under the proviso to sub section (1) of section 17 or to any document mentioned in sub section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act

Explanation —In cases where Act No XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according to such Act, and, where the document is executed after the first day of July 1871, not registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act

147 This
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proves that the person who took the registered document took it with notice of his title 9 C W N 14 see also 35 A 271, 10 A L J 222=34 A 631, 3 M 46 The priority conferred by this section on a registered document of the kinds mentioned therein cannot be claimed where the person in whose favour the subsequent document was executed had notice of the prior title of another person 102 P R 1883, 102 P R 1883 Note, 9 B 427 5 M 73; 9 M 119 This section has no application in cases where the registered deed is obtained with fraud and the party holding the registered deed has no claim to priority by virtue of the section the object of which is to put an end to fraud 49 Ind Cas 839 A title which has once vested by virtue of a deed if it be unregistered can not be divested by a subsequent registered document 44 Ind Cas 354 The section contemplates a case where there is a conflict between the documents of the same kind one being registered and the other being unregistered 101 Ind Cas 836=A I R 1927 Mad 699 A person claiming under a deed which under the law does not require registration and is perfectly valid can not escape the provisions of this section 89 Ind Cas 560

PART XI

Of the Duties and Powers of Registering Officers

(A)—As to the Register-books and Indexes

51 (1) The following books shall be kept in the several offices hereinafter named, namely —

Register books to be kept in the several offices

A —In all registration offices—

Book 1,—"Register of non testamentary documents relating to immovable property,"

Book 2,—"Record of reasons for refusal to register",

Book 3 —"Register of Wills and Authorities to adopt", and

B

B—In

B Wills

(2) In B all documents or memoranda registered under sections 17, 18 and 89 which relate to immovable property, and are not Wills

(3) In Book 4 shall be entered all *documents registered under clauses* (*d*) and (*f*) of section 18 which do not relate to immovable property

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub Registrar

Notes—The fact that a deed of conveyance was entered in Book No IV and not in Book No I as prescribed by this section, is, by itself, an error in mere procedure committed by the Registrar and does not render invalid the deed which he has registered 25 L W 563=38 M L T (H C) 226=A I R 1927 Mad 586=102 Ind Cas 360=52 M L J 482 *If a document which requires registration is* registered but is entered in the wrong book it cannot be regarded as having been registered in accordance with the provisions of the Registration Act 55 Ind Cas 213

Duties of registering officers when document presented

52 (1) (*a*) The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it,

(*b*) a receipt for such document shall be given by the registering officer to the person presenting the same, and

(*c*) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the ordor of its admission

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General

Notes—The refusal of a vendor to sign the registration endorsement does not affect the validity of the registration where the document is presented for registration by the vendee and he has conformed to the provisions of this section 1924 All 938

Entries to be numbered consecutively

53 All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenceed at the beginning of each year

Current indexes and entries therein

54 In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books, and every entry in such indexes shall be made, so far as practicable immediately after the registering officer has copied, or filed a memorandum of the document to which it relates

Indexes to be made [illegible] tering officers, and [illegible] tents

(2) Index No [illegible] ting and of all [illegible] dum filed in Book No 1

(3) Index No II shall contain such particulars mentioned in section 21 *relating to every such document* and memorandum as the Inspector General from time to time directs in that behalf

(4) Index No III shall contain the names and additions of all persons executing every Will and authority [illegible] and persons respectively appointe[illegible] tator or the donor (but not befo[illegible] claiming under the same

(5) Index No IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No 4

[illegible] and shall be prepared

any part of such property is situate, and such Sub Registrar shall file the memorandum in his Book No 1

Procedure where document relates to land in several districts

65 (1) Every Sub Registrar on registering a non testamentary document relating to immovable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate

(2) The Registrar on receiving the same shall file in his Book No 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub district any part of such property is situate and every Sub-Registrar receiving such memorandum shall file it in his Book No 1

(D) *Special Duties of Registrar.*

Procedure after Registration of documents relating to land

66 (1) On registering any non testamentary document relating to immovable property the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub district any part of the property is situate

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate

(3) Such Registrar on receiving any such copy shall file it in his Book No 1, and shall also send a memorandum of the copy to each of the Sub Registrars subordinate to him within whose sub district any part of the property is situate

(4) Every Sub Registrar receiving any memorandum under this section shall file it in his Book No 1

Procedure after registration under section 30, sub section (2)

67 On any document being registered under section 30, sub section (2) a copy of such document and of the endorsement and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66, sub section (1)

(E) *Of the Controlling Powers of Registrars and Inspectors-General*

Power of Registrars to superintend and control Sub Registrars

68 (1) Every Sub Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered

Power of Inspector General to superintend registration offices and make rules

69 (1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

(a) providing for the safe custody of books, papers and documents ,*

(b) declaring what languages shall be deemed to be commonly used in each district ;

(c) declaring what territorial divisions shall be recogniged under section 21 ;

(d) regulating the amount of fines imposed under sections 25 and 34, respectively ,

(e) regulating the exercise of the discretion reposed in the registering officer by section 63 ,

(f) regulating the form in which registering officers are to make memoranda of documents ,

(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51 ,

(h) declaring the particulars to be contained in Indexes Nos I, II, III and IV, respectively ,

(i) declaring the holidays that shall be observed in the registration offices ; and

(j) generally, regulating the proceedings of the Registrars and Sub Registrars.

(2) The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official gazette, and on publication shall have effect as if enacted in this Act

Notes —This section in no way empowers the Inspector General to pass any rule directing by what particular description of evidence a person, producing a deed to be registered shall prove his right to have it registered 16 W R 180

Power of Inspector General to remit fines

70 The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee

PART XII

Of Refusal to Register

Reasons for refusal to register to be recorded

71 (1) Every Sub Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub district shall make an order of refusal and record his reasons for such order in his Book No 2 and endorse the words "registration refused" on the document , and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay,

pt for registration a document so rovisions hereinafter contained, the document is directed to be registered

Notes —*Vide* 47 B 290=25 Bom L R 45=72 Ind Cas 118

Appeal to Registrar from orders of Sub Registrar refusing registration on ground other than denial of execution

72 (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order , and the Registrar may reverse or alter such order

* Certain words after this repealed by Act 5 of 1917 have been omitted

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60, and such registration shall take effect as if the document had been registered when it was first duly presented for registration

on of an appeal to a ... 45 Where refusal to ... s section applies and ... y in such a case is ... J. 506 If a Sub- ... out of time, and on ... tantamount to refu ... of the Registration Act 24 C W. N 304 ... there are three different expressions used in ... istration and refusal to accept for ... 'an appeal shall lie against an ... ocument for registration" refers ... than to cases where a Sub ... at the first stage of the procee ding 73 ...

73 (1) When a Sub Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under ...

Application to Registrar where Sub Registrar refuses to register on ground of denial of execution

days after the maki ... such Sub Registrar ... ment registered

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints

Notes —Where the registration of a document is refused by the Sub Registrar ... registration of the document is ... on has been previously made ... Registrar in reversal of the ... cution of the executant of a ... the High Court to interfere ... The remedy of the aggrieved ... Ind. Cas 511=23 Cr. L J ... s 73(2) did not make the application one not in conformity to the provisions of that section, as the defect is merely one of form and not of substance 74 Ind Cas 688=1924 Lah 28=5 Lah L J 217.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire—

Procedure of Registrar on such application

(a) whether the document has been executed,

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

Notes —The functions prescribed in this section are entirely in the Registrar himself He cannot delegate them to the Sub Registrar 24 C 755 If non-registration of a document has resulted from the refusal of one of the parties to it to execute it, the matter must be inquired into by the Registrar as directed

by this section, before any right to sue under s. 77 would arise 9 C. 851. It is the intention of the Act that the enquiry made under this section should be a summary one. 46 Ind Cas 878 Failure to pay certain penalty ordered to be paid by a Registering officer before a certain document can be registered is non compliance with the requirement of law within this section 94 Ind Cas 251=A. I R 1926 Lah. 451

Order by Registrar to register and procedure thereon

75 (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

(2) If the document is duly p
after the making of such order, the
thereupon shall, so far as may be
in sections 58, 59 and 60

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908

Notes—In the provisions about presentation in this section the language is imperative and that distinguishes cases under this section from cases under ss 32, 33 and 34 40 A 435=16 A L J. 313=45 Ind Cas 37 The certificate of registration is proof that the document was duly registered in the manner provided for by law 89 Ind Cas 615=6 Lah 344

Order of refusal by Registrar.

76 (1) Every Registrar refusing—

(*a*) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub Registrar, or

(*b*) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal and record the reasons for such order in his Book No 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded

(2) No appeal lies from any order by a Registrar under this section or section 72

Notes—The words "no appeal lies from any order under this section' exclude
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A I R 1925 Mad 619=48 M L J 121

Suit in case of order of refusal by Regis

77. (1) Where the Registrar refuses to order the document to be registered under section 72 or section 76, any person

after the m
local limits of whose original jurisdiction is situate the office in which the

document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit

Notes—In a suit under this [illegible] only question to be considered is [illegible] admitted the plaintiff is entitled to [illegible] R. 1904 In a suit for a decree di[illegible] enquiry in Court is to be directed to two points only, namely —(1) whether the documents had been executed, and (2) wheth[illegible] to [illegible] ha [illegible] C [illegible] of t [illegible] 18 M 99 (F B), 28 B 8 In such a suit a Court cannot go into any matter affecting the validity of a document apart from its genuineness 84 P L R 1903=11 P R 1903 The provisions of sections 5 and 14 of the Limitation Act applies to suits under this section 28 A 48; 5 Ind Cas 416, 16 C W N 20, 10 C 265, 8 C 910, 9 M L J 107 Before a plaintiff can institute a suit under this section to enforce registration of a document he must follow strictly the procedure prescribed by the Act for obtaining registration of documents 27 C L J 538=44 Ind Cas 361 A refusal by the Registrar to order a registratior [illegible] Cas 998=[illegible] nor refuse [illegible] =102 Ind [illegible] diction is that fixed by the plaintiff 30 C W N 951=97 Ind Cas 762=A I R 1926 Cal 1091 Independently of this section a suit to compel registration of a document does not lie 95 Ind Cas 187=7 Pat L T 730, 49 M 302 The period of 30 days under s 77 of the Registration Act cannot be extended under s 14 of the Limitation Act on the ground of proceedings being prosecuted in good faith in a Court not having jurisdiction 89 Ind. Cas 884 A claim for possession and mesne profits cannot be joined with a prayer to enforce registration of a document in a suit under this section 39 C L J 40, see also 7 N L J 4 Where in a suit under this section the plaintiff gets a decree directing the Registrar to register a particular document within 30 days after the passing of such decree, the section [illegible] Registrar; (2) A refusal to register by the Sub-Registrar, (3) An appeal within time to the Registrar, (4) A refusal by the Registrar, and (5) the institution of the suit within time 73 Ind Cas 182

PART XIII

Of the Fees for Registration, Searches and Copies

Fees to be fixed by Local Government

78 *The Local Government shall prepare a table of fees payable—

(a) [illegible]

(b) [illegible]

(c) [illegible] of reasons, entries or documents, before, on or after registration,

* Certain words before this repealed by Act 38 of 1920 have been omitted

and of extra or additional fees payable—

(*d*) for every registration under section 30 ,

(*e*) for the issue of commissions ,

(*f*) for filing translations ,

(*g*) for attending at private residences ,

(*h*) for the safe custody and return of documents , and

(*i*) for such other matters as appear to the Local Government necessary to effect the purposes of this Act

Publication of fees

79 A table of the fees so payable shall be published in the official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration office

Fees payable on presentation

80 All fees for the registration of document under this Act shall be payable on the presention of such documents

PART XIV

OF PENALTIES

Penalty for incorrectly endorsing, copying translating or registering documents with intent to injure

81 Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both

Penalty for making false statements, delivering false copies of translations false personation and abetment

82 Whoever—

(*a*) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of

t or

in any proceeding under

of a document, or a false

copy of a map or plan , or

(*c*) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act , or

(*d*) abets anything made punishable by this Act ,

shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both

Notes —No sanction is necessary before instituting a charge under this section 11 C 566 (F B), 1 Rang 299 To complete the offence of false personation [illegible] necessary 5 Bom L R 138 A District

in question

which they

personation

purposes of

comparison 6 Pat 305=104 Ind Cas 620 Fraudulent and dishonest intentions are not necessary ingredients of an offence under this section 66 Ind, Cas 527; 40 M 880, 11 C 566 Where [illegible] the comparison of the thumb [illegible]

83 (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub district, as the case may be, the offence has been committed

Registering officer may commence prosecution

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

Notes—The word "may" in this section should be read as equivalent to 'must be 99 Ind Cas 401, see also 38 A 354 Previous sanctions of the Sub-Registrar or any officer of the Registration Department under this section is not a preliminary requisite for the institution by a private person of proceedings for any offence under s 82 87 Ind Cas 913=26 Cr L J 1025

84 (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code

Registering officers to be deemed public servants

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so

(3) In section 228 of the Indian Penal Code, the words, "judicial proceeding' shall be deemed to include any proceeding under this Act.

PART XV.

MISCELLANEOUS

85. Documents (other than Wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed

Destruction of unclaimed documents

86 No registering officer shall be liable to any suit, claim or demand by reason of any thing in good faith done or refused in his official capacity

Registering officer not liable for thing *bona fide* done or refused in his official capacity

87. Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure

Nothing so done invalidated by defect in appointment or procedure

Notes—The certificate must be signed by the registering officer to make the registration of a document valid and binding according to law 6 C P L R 125 The registration of a mortgage bond was not invalidated by the fact that it was written on a stamp of the wrong kind and that the case was governed by this section under this Act 5 Rang 666

88 (1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee or Official Assignee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at

Registration of documents executed by Government officers or certain public functionaries

any registration office if any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58

(2) When any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government, or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument

Copies of certain orders, certificates and instruments to be sent to registering officers and filed.

89 (1) *Every officer granting a loan under the Land Improvement Loans* Act, 1883, shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No 1

(2) *Every Court granting a certificate of sale of immovable property under* the Code of Civil Procedure 1908 shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate, and such officer shall file the copy in his Book No 1

[illegible]

is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate and such registering officer shall file the copy or copies, as the case may be, in his Book No 1

(4) Every Revenue officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No 1

Notes —A sale certificate must be regarded as a registered document when a copy of it has been transmitted by the Court, and filed by the Registrar under this section 7 M 107

Exemptions from Act

Exemption of certain documents executed by or in favour of Government

90 (1) Nothing contained in this Act or in the Indian Registration Act, 1877, or in the Indian Registration Act, 1871, or in any Act thereby repealed, shall be deemed to require, or to have at any time required the registration of any of the following documents or maps, namely —

(*a*) documents issued received or attested by any officer engaged in making a settlement or revision of settlement of land revenue, and which form part of the records of such settlement, or

(*b*) documents and maps issued received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land and which form part of the record of such survey, or

(*c*) documents which under any law for the time being in force are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village records, or

(*d*) sanads, inam title deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land, or

(*e*) notices given under section 74, or section 76 of the Bombay Land Revenue Code, 1879, of relinquishment of occupancy by occupants or of alienated land by holders of such land

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act

Notes—The words 'grants of assignment of interest" in s 90 (1)(d) are comprehensive enough to include a lease by Government 43 M 65=37 M L J 332 =53 Ind Cas 345 A lease of Crown lands granted by the Secretary of State as representing the Crown is exempt from registration by virtue of s 90 (1) 6 Pat 446 =104 Ind Cas 209=A I R 1927 Pat 319, 74 Ind Cas 369=9 O L J 629

Inspection and copies of such documents

91 Subject to such rules and the previous payment of such fees as the Local Government prescribes in this behalf, all documents and maps mentioned in section 90, clauses (*a*), (*b*) (*c*) and (*e*), and all registers of the documents mentioned in clause (*d*), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies

Burmese registration rules confirmed

92 All rules relating to registration enforced in Lower Burma prior to the commencement of the Indian Registration Act, 1877, shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules

Repeals

Repeals

93 (1) The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof

(2) Nothing herein contained shall be deemed to affect any provision of any enactment in force in any part of British India not hereby expressly repealed

THE SCHEDULE

REPEAL OF ENACTMENTS

(*See section 93*)

Year	No	Short title	Extent of repeal
1877	III	The Indian Registration Act 1877	The whole
1879	XII	The Registration and the Limitation Acts Amendment Act 1879	So much as is unrepealed
1883	XIX	The Land Improvement Loans Act 1883	So much of section 12 as is unrepealed
1886	VII	The Indian Registration Act, 1886	The whole
1888	VII	The Civil Procedure Code Amendment Act, 1888	So much as is unrepealed
1891	XII	The Amending Act, 1891	In the second schedule, the entries relating to Act III of 1877
1899	XVII	The Indian Registration (Amendment) Act, 1899	The whole

THE RELIGIOUS ENDOWMENTS ACT, 1863.*

ACT NO XX OF 1863

RECEIVED THE G-G.'S ASSENT ON THE 10TH MARCH, 1863

An Act to enable the Government to divest itself of the management of Religious Endowments

Preamble

WHEREAS it is expedient to relieve the Boards of Revenue, and the Local Agents, in the presidency of Fort William in Bengal, and the Presidency of Fort Saint George, [illegible]

[illegible]

Colleges or other public purposes, for the maintenance and repair of Bridges; Choultries, or Chattrams, and other public buildings; and for the custody and dispose [illegible]
of the lands [illegible]
religious us [illegible]
of such rel [illegible]
connected therewith, and the appointment of trustees or managers thereof, or involve any connection with the management of such religious establishments,† It is enacted as follows —

1 *Repeal of parts of Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817 Repealed by Act XIV of 1870*

'Civil Court' and "Court

2‡ The word "Civil Court" and "Court" shall "save as provided in section 10' § mean the principal Court of original civil jurisdiction in the district in which "or any other Court empowered in that behalf by the Local Government within [illegible] 1" § the mosque, temple or religious [illegible] h, or to the endowment whereof, any [illegible] under the provisions of this Act

Government to make special provision respecting mosques, &c

3 In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in "the preamble to this Act,"‖ are applicable, and nomination of the trustee, manager or superintendent thereof at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided

* [illegible] ad Act
[illegible] ed

§ Added by Act 21 of 1925

‖ In s 3 the words quoted have been substituted for the word and figure "section 1" by Act XII of 1891.

(*d*) sanads, inam title deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land ; *or*

(*e*) notices given under section 74, or section 76 of the Bombay Land Revenue Code, 1879, of relinquishment of occupancy by occupants or of alienated land by holders of such land

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act

Notes —The words grants of assignment of interest' in s 90 (1)(d) are com [illegible] 43 M 65=37 M L J 332 [illegible] d by the Secretary of State as [illegible] by virtue of s 90 (1) 6 Pat 446 [illegible] Cas 369=9 O L J 629

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THE SCHEDULE

REPEAL OF ENACTMENTS

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THE RELIGIOUS ENDOWMENTS ACT, 1863.*

ACT NO XX OF 1863

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH, 1863

An Act to enable the Government to divest itself of the management of Religious Endowments

Preamble

WHEREAS it is expedient to relieve the Boards of Revenue, and the Local Agents, in the presidency of Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX, 1810, of the Bengal Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges and other purposes, for the maintenance and repair of Bridges, Sarais, Kattras and other public*

Choultries, or Chattrams, and other public buildings, and for the custody and disposal of Esche [illegible]
of the lands granted for [illegible]
religious uses, the ap[illegible]
of such religious establishments, the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments † It is enacted as follows —

1 *Repeal of parts of Bengal Regulation XIX of 1810 and Madras Regulation VII of 1817 Repealed by Act XIV of 1870*

"Civil Court" and "Court"

2‡ The word "Civil Court" and "Court" shall "save as provided in section 10"§ mean the principal Court of original civil jurisdiction in the district in which "or any other Court empowered in that behalf by the Local Government within the local limits of the jurisdiction of which" § the mosque, temple or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act

Government to make special provision respecting mosques &c

3 In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in "the preamble to this Act,"|| are applicable, and nomination of the trustee, manager or superintendent thereof at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided

* This Act repealed in Madras as to Hindu Religious Endowments by Mad Act of 1925 and Mad Act 2 of 1927

† Certain words which were repealed by Act XVI of 1874 have been omitted.

‡ Before this certain words repealed by Act X of 1914 have been omitted

§ Added by Act 21 of 1925

|| In s 3 the words quoted have been substituted for the word and figure "section 1" by Act XII of 1891.

Notes—Whe e he Co t finds ... ed to the ... that the trust ... J 23—A W N ... must be clear ... institution originally belonged to a family 21 M L J 588=11 Ind Cas 633, see also 13 Bom L R 101=35 B 156 16 A 412 28 A 124=2 A L J 612=(1905) A W N 219, 28 A 246=2 A L J 788=(1905) A W N 264 Bequest to trustees for establ sh ment of image and worship of deity after testator s death is vested *Bhupati* v *Ram Lall*, 10 C L J 355 (F B) The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endo ment for ... hat may well be taken into consideration ... e gathered from an ancient document ... v *Shama Charan* 19 M L J 529=10 ... 36 I A 141 (P C) The destruction of an image does not destroy the endowment 8 C L J 362

Whether property is alienable—Property given for the ma ntenance of a *mutt* as a general rule is inalienable in the absence of special circumstances but such property can be lost by the operat on of the statute of limitation 4 Bom L R 733=23 M 271=27 I A 69 P C 5 B 93 But in certain circumstances it is alienable 10 C W N 1000

Character of endowment—The c rcumstances that a comm tee was appointed under this section and worked for many years without protests and challenge were *prima facie* evidence that the endowment was of the character described in this section 17 C L J 183=40 C 323 But the wrongful assumption by the Government of the power to appoint a trustee is not sufficient to bring the temple within s 3 of the Act 28 Ind Cas 833

Accounts to be kept—The trustee of a *Durga*, which falls under this section is bound to keep proper account and to submit them to the Committee 31 M 212=18 M L J 205

Power of Government—Where an institution falling under sect on 3 of the Act is handed over by the Government to a Committee appointed under this Act, the Government has not the power to remove the trustee thereof 15 M L J 26

Burden of proof—In a suit by members of a temple Committee the burden of proving that the temple was of the class mentioned in this section lies on the plaintiff 12 M 366

Transfer to trustees, &c of trust property in charge of Revenue Board

4 In the case of every such mosque temple or other religious establishment, which at the time of the passing of this Act shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or superintendent all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple or other religious establishment except such property as is hereinafter provided,

Cessation of Board s powers as to such property

And the powers and responsibilities of the Board of Revenue and the local agents in respect to such mosque temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine

C ... Th ... has ... the control and superintendence of ... committee any right of supervision ... 16 L W 340=31 M L T 217=

Procedure in case of dispute as to right of succession to vacated trusteeship

5. Whenever from any cause a vacancy shall occur in the office of any trustee, manager or superintendent, to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple or other religious establishment, and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office

Powers of managers appointed by Court

The manager so appointed by the Civil Court shall have and shall exercise all the powers which, under this or any other Act, the former trustee, manager or superintendent, in whose place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple or religious establishment, or the property belonging thereto.

Scope—Before section 5 of the Religious Endowments Act can be made applicable to a case it is clear from a perusal of sections 4 and 5 of the Act that a property in question should be one which had been under the management of any trustee, manager or superintendent at the time of the passing of the Act and that the said property should have been transferred to such trustee, manager or superintendent by the Local Government as directed by that Act. 48 Ind Cas 162

Not a Suit—A proceeding started under section 5 of the Religious Endowments Act is not a suit, consequently an order passed under that section is not a decree and is not appealable 47 Ind Cas 484, but see 4 Mad 295 where it has been held that appeal from order under s 5 lies by virtue of s 647 of the Code of Civil Procedure An order made by a Civil Court under the powers conferred by s 5 of the [illegible]

tion of the Civil Court under the section is not confined to cases in which a dispute has arisen respecting the right to succeed to the office 26 M 85

Appoint a Receiver—The Court has no power to appoint a receiver except in certain events under s 5 of the Act 8 C W N 404

Temporary appointment of a manager—District Courts have no power upon a vacancy occurring in the office of the trustee of a religious endowment, to appoint a trustee under s 5 of the Religious Endowments Act, unless the endowed property has been actually transferred to the former trustee under s 4 of the Act by the Board of Revenue or Government Section 5 of the Act contemplates the tem [illegible]

the property is such as was under the management of any trustee, manager or superintendent at the time when the Act was passed and was transferred to such trustee, etc, by the Local Government 18 [illegible] temporary trustees should be made

a temple committee has no power

t Ind Cas 783 An order purporting

quiry as to whether the foundation

open to the revisional and not the

6 Thes rights, power and responsibilities of every trustee, manager or superintendent, to whom the land and other property of any mosque, temple or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple or religious establishment, and over such trustee, manager or superintendent, which authority is hereby determined and repealed

Rights, &c, of trustees to whom *property is transferred* under s 4

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager or superintendent to whom such transfer is made

Appointment of committees

7 *In all cases* described in *section* 3 of *this Act the Local Government* shall once for all appoint one or more committees in every division or district to take the place, and to exercise the powers of the Board of Revenue and the local agents under the Regulations hereby repealed

Constitution and duties of committees

Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act

Disqualification of a candidate—A candidate is disqualified to be elected as a member of *Devasthan* if he had given money or other valuable consideration "in return for' votes and as the result of a bargain with the voters that they should vote for him 29 M 166=15 M L J 449 The committee of a *mutt* appointed under s 7 can maintain a suit for accounts against a tehsildar 9 C L J 636=2 Ind Cas 635 The effect of ss 7 and 19 of the Act is that the surviving members must act so that the date *of the election shall be fixed not later than three months from the date* of the vacancy If they do not so act their powers of election are gone, and then unless the Civil Court takes proceeding on the application of some body and appoints persons, there is no power to fill up the vacancy 8 M L T. 113=7 Ind Cas 754

Status—A committee appointed under this section is a legal person endowed with powers which do not belong to individual members The committee does not cease on the death of any or all of its members 39 C 304=12 Ind Cas 147, see also 1 Pat L J 437

8 The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment

Qualifications of members of committee

The appointment of the committee shall be notified in the official Gazette

In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held, under such rules (not inconsistent with the provisions of this Act) as shall be *framed by such Local Government*

Ascertaining wishes of persons interested

Notes—The word 'religion does not mean sect 9 M L J 173 A member of a committee of a temple appointed under this section can retire from his office of his

own will 6 M 114 The qualifications contained in this section regarding committee members apply to vacancy filled up under s 10 29 M L J 671

9. Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness;

Tenure of office

and no such member shall be removed except by an order of the Civil Court as hereinafter provided

Removal

10 Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided

Vacancies to be filled

The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government,

Procedure

and whoever shall be then elected under the said rules shall be a member of the committee to fill such vacancy

If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply, and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy

When Court may fill vacancy

"*Explanation*—In this section 'Civil Court' means the principal Court of original civil jurisdiction in the District in which the mosques, temples or religious establishments for which the committee has been appointed or any of them are situate"*

Object—The object of this section seems to be to prevent a deadlock when the committee do not do their duty and arrange for an election by providing that where an election has not been held within the prescribed time, the Court may make the [illegible] t to do so, may order the remaining [illegible] on does not say either expressly or [illegible] to hold an election before they [illegible] lve further delay and is what the [illegible]) 842=21 Ind Cas 451

Procedure—A District Judge acting under this section is not bound to [illegible]

[illegible] ssed by a District Judge [illegible] lso 11 M 26=14 I A [illegible] gious Endowments Act [illegible] review an order passed [illegible] er under section 141 of

* Inserted by Act 21 of 1925

Vacancy in committee—When a vacancy occurs among the members of a Devasthanam committee the remaining members of the committee can proceed under section 10 to elect new mem' ... nominate any for it An order was made t ... the Devasthanam Committee of the ... p a vacancy that had occurred on the cc ... thwith The committee thereupon did not elect, but nominated a person for the vacancy *Held* that the District Court had power to supersede such nomination by a nomination of his own 6 M L J I

Privy Council Case—This section does not empower the Civil Court to direct the remaining members of a committee appointed under this Act when they have failed to hold an election for the choice of a new member to hold such election It can direct them to fill up the vacancy, but such filling up is then their own Act A proceeding of the Civil Court under this section is a judicial and not merely an administrative or ministerial act In such matters the Civil Court exercises its powers as a Court of Law not merely as a *persona designata* whose determinations are not to be treated as judgments of a legal tribunal 15 A L J 645=40 M 793=26 C L J 143

Section 115 of the Civil Procedure—Section 115 of the Civil Procedure Code enables the High Court in a case in which no appeal lies, to call for the record

... *exparte* application praying that persons ... ild perform their trust or discharge their ... eedi gs under this section 15 A L J 645 —40 ... 793 ...

... 'f estate consisted of 3 members One of ... up the vacancy two interested persons ... ed the other members of the committee ... The Court passed an order directing the issue of notice for an election and an election took place One of the defendants there applied in the suit to set aside the election and the Court set aside the election and dismissed the suit *Held* that the suit had ended with the ordering of an election and no further proceedings could be taken in the suit 92 Ind Cas 902

No member of the committee to be also trustee &c of mosque &c

11 No member of a committee appointed under this Act shall be capable of being, or shall act also as a trustee, manager or superintendent of the mosque, temple or other religious establishment for the management of which such committee shall have been appointed

On appointment of committee, Board and local agents to transfer property

12 Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple, or religious establishment, and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for,

Termination of powers and responsibilities of Board and agents

and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple or religious establishment and to all land and other property so transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer be exercised by such committee to whom such transfer is made

Commencement of powers of committee

Notes—Section 12 relates only to the rents of property transferred by Government to the committee of such institution 17 M 143 A devasthanam committee has no power to interfere with the acts of the temple trustees in a question of purely temporal honours to definite persons 54 Ind Cas 281=10 L W 616

Powers of Committee—*Vide* 43 Ind Cas 905, 28 Ind Cas 556

13 It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of this act shall apply to keep regular accounts of his receipts and disbursements, in respect of the endowments and expenses of such mosque, temple or other religious establishment,

Duty of trustee &c, as to accounts,

and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursement at least once in every year, and every such committee of management shall themselves keep such accounts thereof

and of committee

Notes—A temple committee constituted under this Act has no business to interfere in the internal management of the temple or in mere matters of ritual and ceremonial They should not interfere with the trustee except where interference is necessary in discharge of the secular duties which the Act imposes on the committee The committee's functions are primarily to see that the funds of the endowment are preserved and not wasted 54 Ind Cas 281

14 Any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof or the trusts relating thereto may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee in respect of the trusts vested in or confided to them respectively,

Persons interested may singly sue in case of breach of trust, etc

and the Civil Court may direct the specific performance of any act by such trustee manager, superintendent or member of a committee,

Powers of Civil Court

and may decree damages and costs against such trustee, manager, superintendent or member of committee

and may also direct the removal of such trustee manager, superintendent or member of a committee

Scope of the section and section 92 of C P Code—S 92 of the Civil Procedure Code and this section so far as the forms of relief to which they relate are the same appear to offer a choice to persons interested in the trust They might proceed under either and are not bound to proceed under both 24 M L J 1697

=14 M L T 44=20 Ind Cas 515 But section 92 of the Civil Procedure Code is substantially the wider section and provides *inter alia* for settling a scheme which is a jurisdiction of a very wide and beneficial nature 48 Ind Cas 514 Suits in which relief is asked for against strangers to the trust, whether alienees from the trustees or trespassers are outside the purview of s 92 of the Code 31 M L J 777 =20 M L T 490=40 M 212

Who can sue—This section is sufficiently general in terms to empower any person interested in any temple, mosque or religious endowment or in the performance of the trusts relating thereto to sue the trustee, manager or superintendent or the member of a committee appointed under the Act for misfeasance and also to empower the Court to order the removal of a trustee, etc 2 M 197, see also 7 C 769=9 C L R 410

Applies to certain religious trusts—This section only applies to certain religious trusts and endowments which had been or might come to be under the management of Government 2 C L R 128, 3 C 363, 2 C L R 121, 17 M 95

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Removal of all' trustees—Th

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trustees, whether hereditary or selec

and superintendent of a mosque, etc

manager or the superintendent of a

are applicable not the trustee, etc of any mosque 8 C 32=9 C L R 433 In a suit for removal of a trustee the only question for the Court to decide is if the trustee has been guilty of any misfeasance breach of trust or neglect of duty 89 Ind Cas 429, 4 Pat 741=88 Ind Cas 1035

No appeal—No appeal lies against the order as to costs 21 M 421

Suit against transferee.—A transferee of a trust property under a transaction which amounts to a breach of trust on the part of the trustee of the institution cannot be proceeded against under the provisions of the Religious Endowments Act 22 M 223

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to Civil Courts for the plaintiffs to show that there are any special funds constituting an endowment of the institution 23 M 298 In a suit brought under the Religious Endowments Act, a declaration that property belongs to an institution and that a mortgage over it is binding on the institution may be asked for and made when it is ancillary to a claim for the removal of the manager 24 M 243 Under section 14 of the Act, the Court may direct the removal of a trustee or a manager Where a dismissed trustee is in possession of trust properties he has on his removal, to be relieved of his possession of the trust properties 18 M L J 205=31 M 212 Section 14 of the Act only empowers a Court to direct the specific performance of act by the trustee manager or superintendent, or to award damages or costs against such trustee, manager, or superintendent and to direct their removal 5 A L J 191=A W N (1908) 101 Where there is duly constituted manager of a religious institution he cannot be removed from his office except by bringing a civil suit and for such a civil suit *previous sanction is required* under ss 14 and 18 of the Act or s 539 of the Civil Procedure Code 7 P R 1908=176 P L R 1908, see also 216 P L R 1912 A Civil Court has jurisdiction to try, when proceedings are instituted under this section 14 M L T 311=6 Ind Cas 484 In a suit under this section the Court cannot give any relief in the shape of cancellation of the sale executed by the manager of the dedicated property or any decree for possession 48 A 158=91 Ind Cas 871=24 A L J 21 A suit by a member of a Religious Endowment Committee for a declaration that a resolution of the committee was

ultra vires and invalid owing to want of notice, is maintainable under the general law and is not barred by s 14 91 Ind Cas 352=A I R 1926 Cal 583 Where lands are granted for a service to be performed, namely, the up-keep of a mosque and its buildings and the performance of religious services therein the grantee or his descendants need not strictly account for the disposal of the income of the lands so long as the services are performed properly 42 M L J 273=67 Ind Cas 492

The suit contemplated by section 14 of the Act is a suit instituted primarily against the trustee, manager or superintendent of a mosque or religious establishment of the members of any committee appointed under that Act and the only relief that can be asked in such a suit is a decree directing specific performance of any act by such trustee manager, etc., a decree for damage and costs against them and decree directing their removal 49 Ind Cas 355

Although under s 539 of the Code of Civil Procedure there was a difference of opinion whether in a suit brought under that section permission should not also be obtained under s 14 of Act XX of 1863 These doubts had been set at rest by s 92 of the new code as sub cl (2) makes it clear that the provisions of the section are mandatc ... ed in the section ... same time the jur ... Act Section 92 o ... tually exclusive ... r any relief comm

15 The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts

Nature of interest entitling person to sue

Any person having right of attendance, or having been in the habit of ... jue, temple ... tribution of ... of the last preceding section

16 In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators

Reference to arbitrators

Whenever any such order shall be made, the provisions of Chapter XXXVII* of the Code of Civil Procedure shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under section 506* of the said Code

Civil Procedure Code applied

Notes—Under s 16 of the Religious Endowments Act a Court may refer any matter in difference in the suit for decision by an arbitrator, but it is not open to the Court to refer the whole suit 26 M 361 *Vide* also 19 M 498

17 Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from the making the order of reference under the said section 506† of the said Code of Civil Procedure

Reference under Civil Procedure Code

18 No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit *†

Application for leave to institute suits

The Court, on the perusal of the application, shall determine whether there are sufficient *prima facie* grounds for the institution of a suit, and, if in the

* Act XIV of 1882 but now see Act V of 1908

† Certain words after this which are repealed by Act VII of 1870 have been omitted

judgment o the Court there are such grounds, leave shall be given for its institution *

Costs

If the Court shall be of opinion that the suit has been for the benefit of the trust and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to b e paid out of the estate

Leave to institute suits —Leave to bring a suit should be obtained under this section 3 C 563=2 C L R 121 Such a suit may be brought in *forma pauper is* 24 M 419 Applications to District Courts under this section should be only verified and prosecuted either by the applicant in person or by h s pleader 24 M 685 When application is made against several trustees the application should clearly set forth the charges and the nature of the charges made against each especially as under s 18 the Judge is to determine merely on a perusal of the verified petition whether there are sufficient *prima facia* grounds against each of the trustees and the Judge would be acting with material irregularity in the exercise of his jurisdiction in according sanction based on a general petition and if such irregularity should materially prejudice the trustees, the High Court can exercise its powers of revision under section 622 C P C and can set aside the sanction 15 M L J 221 But no appeal lies against such an order 5 C L J 64=34 C 584 A trustee of a religious endowment can sue his co trustee for a breach of trust without getting sanction under this section 19 M L J 513=4 Ind Cas 874

A District Judge can grant leave under this section after refusing leave (1911) 2 M W N 167 A suit for the removal of a trustee of a mosque under the authority [illegible] instituted with the leave of the [illegible] ointment of a new trustee by the [illegible] leave under s 593 of the Code of [illegible] M W N 142 For a Court to have jurisdiction to grant sanctions under this section to institute a suit, it is not necessary for it to be shown that the Board of Revenue has actually exercised control over the temple 26 M 166

A sanction given at the instance of a petitioner under this section for leave to institute a suit without first giving notice to the counter petitioners and hearing their objections, if any, is a legal sanction 7 M L J 48 The Religious Endowments Act was not intended to apply to a suit, brought under the ordinary original jurisdiction of the High Court inherited from the Supreme Court, charging neglect of duty on the part of a temple trustee Such a suit is therefore maintainable without leave being obtained under this section 24 M 219 An order refusing leave to institute a suit is not appealable A I R 1925 Pat 138 Leave to sue under this section should not be granted on the basis of vague and indefinite allegations nor should sanction be given against all or any of the respondents without specifically mentioning the party against whom the r ght to sue is sanctioned The District Judge cannot delegate to another the funct on of reporting on the allegations unless it be to make a local investigation as commissioner 1924 Mad 644, See also 40 M 212; (1916) M W N 351, 3 L W 12, 36 Ind Cas 880, 10 M L J 109

Court may require accounts of trust to be filed

19 Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary

Proceedings for criminal breach of trust

20 No suit or proceeding before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a criminal Court for criminal breach of trust

* Certain words after this which are repealed by Act VII of 1870 have been omitted

Cases in which endowments are partly for religious and partly for secular purposes.

21. In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any [illegible] shall determine what portic [illegible] remain under the superir [illegible] uses,

and what portion shall be transferred to the superintendence of the trustee, manager or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

Government not to hold charge henceforth of property for support of any mosque, temple, &c

22. Except as provided in this Act, it shall not be lawful* for any Government in India, or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or

to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith

Effect of Regulation [illegible] tioned, and of buildings of antiquity, etc

23 N[illegible] the Regu-[illegible] in so far as [illegible] mples and [illegible] to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value or required for the convenience of the public

"India"

24 The words "India" in this Act shall denote the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Vict, c 106, entitled "An Act for the better government of India."*

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* Certain formal words which were repealed by Act XVI of 1874 have been omitted

THE RELIGIOUS SOCIETIES ACT, 1880

ACT No. I OF 1880 *

RECEIVED THE G G S ASSENT ON THE 9TH JANUARY, 1880

An Act to confer certain powers on Religious Societies

Preamble

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies, It is hereby enacted as follows —

Short title

1 This Act may be called ' The Religious Societies Act, 1880 †

Local extent

It shall extend to the whole of British India,

but nothing herein contained shall apply to any Hindus, Muhamadans or Buddhists, or to any persons whom the ' Local Government' ‡ may from time to time by notification in the ' Local Official Gazette '‡ exclude from the operation of this Act

Appointment of new trustee in cases not otherwise provided for

2 [illegible]

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two thirds of the members of such body actually present at the meeting at which the appointment is made

Appointment under section 2 to be recorded in a memorandum under the hand of the Chairman of the meeting

3 Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made

Such memorandum shall be in the form set forth in the schedule hereto annexed or as near thereto as circumstances allow, shall be executed and attested

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* Act I of 1880 has been declared under the Scheduled Districts Act (XIV of 1874) to be in force in the following Scheduled Districts in the Chutia Nagpur Division —The Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the district of Singbhum —*See the Gazette of India* Oct 22, 1881, Pt I, p 504

† Certain words after this repealed by Act 10 of 1914 have been omitted

‡ The words were substituted by Act 38 of 1920

by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877, section 17

Notes —*Vide* the English Trustee Appointment Act 1850 (13 & 14 Vict, c 28) As regards that Act, which corresponds to this Act, it has been said that the primary, *if not the only object of that enactment obviously was to make the trust* estate devolve upon the trustees of the society from time to time appointed by the society (in the absence of any special direction in the trust deed) succeed generally to all the powers of the old trustees or take the legal estate only *Re Houghton's Chapel*, 2 W. R 631 (Eng)

Property to vest in new trustees without conveyance

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, *notwithstanding anything contained in any such instrument, become vested*, without any conveyance or other assurance in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees

Notes —By this section property vests in the new trustees without any conveyance and the new trustees are vested with the same powers as the old trustees *Cf* also s 4 of Stat 53 & 54 Vict c 19

Saving of existing modes of appointment and conveyance

5 Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required

Provision for dissolution of *societies and adjustment of* their affairs

6 Any number not less than three fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved, and thereupon it shall be dissolved *forthwith*, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate, and the Court shall make such order in the matter as it deems fit.

Upon a dissolution no member to receive profit

7 If upon the dissolution of any such body there remains, after the *satisfaction of all its debts and liabilities*, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid

Saving of certain provisions of instruments

8. Nothing in sections 6 and 7 shall be deemed to affect any provisions contained in any instrument for the dissolution of such body, or for the payment or distribution *of such property*

Questions may be submitted to High Court

9 When any question arises, either in connection with the matters herein before referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appoint-

THE RELIGIOUS SOCIETIES ACT, 1880

ACT No. I OF 1880 *

Received the G.-G.'s assent on the 9th January, 1880

An Act to confer certain powers on Religious Societies

Preamble

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies, It is hereby enacted as follows:—

Short title

1. This Act may be called "The Religious Societies Act", 1880 †

Local extent

It shall extend to the whole of British India,

but nothing herein contained shall apply to any Hindus, Muhamadans or Buddhists, or to any persons whom the 'Local Government"‡ may from time to time, by notification in the "Local Official Gazette' ‡ exclude from the operation of this Act

Appointment of new trustee in cases not otherwise provided for

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two thirds of the members of such body actually present at the meeting at which the appointment is made

Appointment under section 2 to be recorded in a memorandum under the hand of the Chairman of the meeting

3. Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested

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* Act 1 of 1880 has been declared under the Scheduled Districts Act (XIV of 1874) to be in force in the following Scheduled Districts in the Chutia Nagpur Division —The Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the district of Singbhum.—*See the Gazette of India*, Oct 22, 1881, Pt I, p 504

† Certain words after this repealed by Act 10 of 1914 have been omitted

‡ The words were substituted by Act 38 of 1920

THE SCHEDULES

An Act to constitute a Reserve Bank of India

WHEREAS it is expedient to constitute a Reserve Bank for India to regulate *the issue of bank notes and the keeping of reserves with a view to securing* monetary stability in British India and generally to operate the currency and credit system of the country to its advantage ,

AND WHEREAS in the present disorganisation of the monetary systems of the world it is not possible to determine what will be suitable as a permanent basis for the Indian monetary system ,

BUT WHEREAS it is expedient to make temporary provision on the basis of the existing monetary system, and to leave the question of the monetary standard best suited to India to be considered when the international monetary position has become sufficiently clear and stable to make it possible to frame permanent measures , It hereby enacted as follows .—

Notes —' The object of the Act is to set up a Reserve Bank for India, The Federal Structure Sub committee of the F
that ' with a view to ensuring confidence
currency efforts should be made to
any political influence, as early as may
will be entrusted with the management of the currency and exchange." The

F ... onference recommen d ... Legislature a Reserve E ... In the report of that committee it was also placed on record that the Secretary of State undertook that ... ld be consulted in the preparation of proposals for ... Bank including those relating to the reserves —

CHAPTER I

PRELIMINARY

Short title, extent and commencement

1 (1) This Act may be called the Reserve Bank of India Act, 1934

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas

(3) This section shall come into force at once, and the remaining provisions of this Act shall come into force on such date or dates as the Governor General in Council, may, by notification in the *Gazette of India*, appoint

Notes — Although we agree that no specific date can be inserted for setting up the Bank we desire to represent strongly to Government that the Bank should be set up with all possible speed '—*Report of the Select Committee*

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,

(a) "the Bank' means the Reserve Bank of India constituted by this Act,

(b) "the Central Board' means the Central Board of Directors of the Bank,

(c) "provincial co operative bank" means the principal society in a province which is registered or deemed to be registered under the Co operative Societies Act, 1912,* or any other law for the time being in force in British India relating to co operative societies and the primary object of which is the financing of the other societies in the province which are or are deemed to be so registered·

Provided that *in addition to such principal society in a province or* where there is no such principal society in a province the Local Government may declare any central co operative society in that province to be a provincial co ...

... the

Notes —Clause (c)— We have altered the definition of provincial co operative bank because the wording of the original bill would not have covered the special conditions as regards co operative banks in the United Provinces '—*Report of the Select Committee*

CHAPTER II

INCORPORATION, SHARE CAPITAL, MANAGEMENT AND BUSINESS

Establishment and incorporation of Reserve Bank.

3 (1) A Bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the Governor General in Council and of carrying on the business of banking in accordance with the provisions of this Act

* Act II of 1912 † Act III of 1906.

(2) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued.

Share capital, share registers and share holders

4 (1) The original share capital of the Bank shall be five crores of rupees divided into shares of one hundred rupees each, which shall be fully paid up

(2) Separate registers of share-holders shall be maintained at Bombay, Calcutta, Delhi, Madras and Rangoon, and a separate issue of shares shall be made in each of the areas served by those registers, as defined in the First Schedule, and shares shall be transferable from one register to another

(3) A shareholder shall be qualified to be registered as such in any area in which he is ordinarily resident or has his principal place of business in India, but no person shall be registered as a shareholder in more than one register, and no person who is not—

(*a*) domiciled in India and either an Indian subject of His Majesty, or a subject of a State in India, or

(*b*) a British subject ordinarily resident in India and domiciled in the United Kingdom or in any part of His Majesty's Dominions the Government of which does not discriminate in any way against Indian subjects of His Majesty, or

(*c*) a company registered under the Indian Companies Act, 1913,* or a society registered under the Co operative Societies Act, 1912,† or any other law for the time being in force in British India relating to co operative societies or a scheduled bank, or a corporation or company incorporated by or under an Act of Parliament or any law for the time being in force in any part of His Majesty's Dominions the Government of which does not discriminate in any way against Indian subjects of His Majesty, and having a branch in British India,

shall be registered as a shareholder or be entitled to payment of any dividend on any share, and no person, who, having been duly registered, as a shareholder, ceases to be qualified to be so registered, shall be able to exercise any of the rights of a shareholder otherwise than for the purpose of the sale of his shares

(4) The Governor General in Council shall, by notification in the *Gazette of India*, specify the parts of His Majesty's Dominions which shall be deemed for the purposes of clauses (b) and (c) of sub-section (3) to be the parts of His Majesty's Dominions in which no discrimination against Indian subjects of His Majesty exists

(5) The nominal value of the shares originally assigned to the various registers shall be as follows, namely —

(*a*) to the Bombay register—one hundred and forty lakhs of rupees ;
(*b*) to the Calcutta register—one hundred and forty five lakhs of rupees ,
(*c*) to the Delhi register—one hundred and fifteen lakhs of rupees ,
(*d*) to the Madras register—seventy lakhs of rupees ,
(*e*) to the Rangoon register—thirty lakhs of rupees

Provided that if at the first allotment the total nominal value of the shares on the Delhi register for which applications are received is less than one hundred and fifteen lakhs of rupees, the [illegible]
to any allotment, transfer any shares not
value of thirty five lakhs of rupees from
the Bombay and the Calcutta register

A committee consisting of two elected members of the Assembly and one elected member of the Council of State to be elected by non official members

* VII of 1913 † II of 1912

Financial Safeguards Committee of the Third Round Table Conference recommended that steps should be taken to introduce into the Indian Legislature a Reserve Bank Bill conceived on the above [illegible] committee it was also placed [illegible]

CHAPTER I

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(*c*) "provincial co operative bank' means the principal society in a province which is registered or deemed to be registered under the Co operative Societies Act, 1912,* or any other law for the time being in force in British India relating to co operative societies and the primary object of which is the financing of the other societies in the province which are or are deemed to be so registered :

Provided that in addition to such principal society in a province or where there is no such principal society in a province the Local Government may declare any central co operative society in that province to be a provincial co operative bank within the meaning of this definition,

(*d*) "rupee coin" means silver rupees which are legal tender under the provisions of the Indian Coinage Act, 1906, † and

(*e*) "scheduled bank means a bank included in the Second Schedule

Notes —Clause (c)— We have altered the definition of provincial co operative bank because the wording of the original bill would not have covered the special conditions as regards co operative banks in the United Provinces'—*Report of the Select Committee*

CHAPTER II

INCORPORATION, SHARE CAPITAL, MANAGEMENT AND BUSINESS

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(3) A shareholder shall be qualified to be registered as such in any area in which he is ordinarily resident or has his principal place of business in India, but no person shall be registered as a shareholder in more than one register, and no person who is not—

(*a*) domiciled in India and either an Indian subject of His Majesty, or a subject of a State in India, or

(*b*) a British subject ordinarily resident in India and domiciled in the United Kingdom or in any part of His Majesty s Dominions the Government of which does not discriminate in any way against Indian subjects of His Majesty, or

(*c*) a company registered under the Indian Companies Act, 1913,* or a society registered under the Co operative Societies Act, 1912,† or any other law for the time being in force in British India relating to co operative societies or a scheduled bank, or a corporation or company incorporated by or under an Act of Parliament or any law for the time being in force in any part of His Majesty s Dominions the Government of which does not discriminate in any way against Indian subjects of His Majesty, and having a branch in British India,

shall be registered as a shareholder or be entitled to payment of any dividend on any share, and no person who, having been duly registered, as a shareholder, ceases to be qualified to be so registered, shall be able to exercise any of the rights of a shareholder otherwise than for the purpose of the sale of his shares

(4) The Governor General in Council shall, by notification in the *Gazette of India*, specify the parts of His Majesty s Dominions which shall be deemed for the purposes of clauses (b) and (c) of sub-section (3) to be the parts of His Majesty s Dominions in which no discrimination against Indian subjects of His Majesty exists

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the Bombay and the Calcutta register

A committee consisting of two elected members of the Assembly and one elected member of the Council of State to be elected by non official members

* VII of 1913

† II of 1912

of the respective Houses shall be associated with the Central Board for the purpose of making public issue of shares and looking after the first allotment of shares

(6) In allotting the shares assigned to a register, the Central Board shall, in the first instance, allot five shares to each qualified applicant who has applied for five or more shares , and, if the number of such applicants is greater than one fifth of the total number of shares assigned to the register, shall determine

h of the number
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ty deem fair and
equitable, having regard to the desirability of distributing the shares and the voting rights attached to them as widely as possible

(8) Notwithstanding anything contained in sub sections (6) and (7), the Central Board shall reserve for and allot to

value of two lakhs and twenty thousand rupees

disposal at par to Directors seeking to obtain

required under sub section (2) of section 11.

(9) If, after ordance with the provisions of sub-sect unallotted, they shall, notwithstanding e allotted to and taken up by Government, and shall be sold by the Governor General in Council as soon as may be, at not less than par, to residents of the areas served by the register concerned

(10) The Governor General in Council shall have no right to exercise any vote under this Act by reason of any shares allotted to him under sub section (8) or under sub-section (9)

(11) A Director shall not dispose of any shares obtained from Government under the provisons of sub section (8) otherwise than by re sale to Government at par, and Government shall be entitled to re purchase at par all such shares held by any Director on his ceasing from any cause to hold office as Director

Notes—**Clause (1)**—In order to ensure that the shares of the Reserve Bank shall be widely held we recommend that the nominal value of each share should be reduced from Rs 500 to Rs 100

Clause (2)—It was represented to us that shares should not be allowed to be transferred from one register to another because this receipt lead to certain registers denuded of a large number of shares, thus leaving the holders of a comparatively small number of shares to elect representatives to the Local Board and thereby to the Central Board We have come to the conclusion that the advantages of free marketability are so great that transfers from one register to another should be freely allowed We further consider that a contingency such as that referred to is extremely unlikely to arise and that a majority of the shares of the Reserve Bank when once allotted will be firmly held as a lock up investment by the original holders If con

one register is accumulating a large number by a really substantial percentage, the of bringing forward suitable amending

Clause (3)—As regards the provisions prepared

amending legislation.

Clause (4).—We have recommended the deletion of the discretionary power proposed to be vested in the Central Board to decline without giving any reasons to allot shares to any applicant or to register any transfer of shares.

mended in the nominal value of each share we propose that five shares should carry
register the Central Board should
each qualified applicant who has
emaining unalloted shares, shares
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number of qualifying shares, we recommend that a sufficient number of shares should be reserved by Government to be available for purchase by the Directors and members of Local Boards at par, and that these purchasers should give an option to Government to re purchase such shares at par when they retire

We attach a great importance to securing that as large a proportion of the population of India as possible shall become shareholders of the Reserve Bank and thereby take an interest in its efficient working We therefore recommend that the widest publicity should be given to the prospectus of the issue of the Reserve Bank shares and that facilities for applications to investors should be given through the Government post offices and treasuries.

Clause (5)—We have come to the conclusion that a more equitable distribution of the original capital having regard to the population of the areas concerned be made in the following manner:—

Bombay register—140 lakhs,

"**Sub Clause (6)**—We have split up this sub clause into a number of sub-clauses The original arrangement seemed unwieldy."—*Report of the Select Committee*

Increase and reduction of share capital

5. (1) The share Capital of the Bank may be increased or reduced on the recommendation of the Central Board, with the previous sanction of the Governor General in Council and with the approval of the Central Legislature, to such extent and in such manner as may be determined by the Bank in general meeting

(2) The additional shares so created shall be of the nominal value of one hundred rupees each and shall be assigned to the various registers in the same proportions as the shares constituting the original share capital

(3) Such additional shares shall be fully paid up, and the price at which they may be issued shall be fixed by the Central Board with the previous sanction of the Governor General in Council.

(4) The provisions of section 4 relating to the manner of allotment of the ... shall apply to the allotment of ... s shall not enjoy any preferential

Notes—"It was originally provided in the bill that any additional shares created should be assigned to the various registers to any manner fixed by the Central Board with the previous sanction of the Governor General in Council and that the latter should also determine the manner in which such additional capital should be allotted to the various areas We have recommended that the distribution should be in the same proportions as fixed for the original share capital

"In view of the liability that would be placed on the Government by any increase in the share capital of the Bank we consider that the previous approval of the Central Legislature should be obtained to any increase in the share capital'—*Report of the Select Committee*

Offices, branches and agencies

6 The Bank shall, as soon as may be, establish offices in Bombay, Calcutta, Delhi, Madras and Rangoon and a branch in London and may establish branches or agencies in any other place in India, or, with the previous sanction of the Governor General in Council, elsewhere

Notes (6)—It was suggested to us that branches of the Reserve Bank should be opened at Lahore, Cawnpur and Karachi The principal reason for this suggestion was that the Banks and the public at those places would not otherwise get the same facilities as would be available at places where there were offices and branches of the Reserve Bank We wish to emphasise that at places where it has no branch ... facilities of the same ad- ... branches We do not ... to the opening of branc ... experience We, however recommend that in the agreement between the Reserve Bank and the Imperial Bank of India it should be made clear that the former is not prevented by that agreement from opening a branch anywhere if it considers this necessary or desirable

"We consider in this connection whether it would be proper to place a statutory obligation on the Reserve Bank to open a branch in London We have noted that ... among the Central Banks of the world is not to establish ... y other Central Banks as their ... to make any recommendation ... he importance of international co operation between the Central Banks of various countries we cannot accept the view that the practice of other countries affords an exact parallel to the particular case of India as regards representation in London We therefore, think that the ... we recommend ... ral in Council ... the Head Office of the ... risk of ... lifferent ... provide ... nd have

left it to the discretion of the Central Board how they should move their headquarters between them' —*Report of the Select Committee*

Management

7. The general superintendence and direction of the affairs and business of the Bank shall be entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank and are not by this Act expressly directed or required to be done by the Bank in general meeting

Notes —' We have made a small drafting amendment to bring out more clearly the intention of this clause" —*Report of the Select Committee*

Composition of the Central Board, and term of office of Directors

8. (1) The Central Board shall consist of the following Directors, namely .—

(*a*) a Governor and two Deputy Governors, to be appointed by the Governor General in Council after consideration of the recommendations made by the Board in that behalf ,

(*b*) four Directors to be nominated by the Governor General in Council ,

(*c*) eight directors to be elected on behalf of the shareholders on the various registers, in the manner provided in section 9 and in the following numbers, namely :—

(*i*) for the Bombay Register—two Directors ,

(*ii*) for the Calcutta Register—two Directors ,

(*iii*) for the Delhi Register—two Directors ,

(*iv*) for the Madras register—one Director ,

(*v*) for the Rangoon register—one Director , and

(d) one Government official to be nominated by the Governor General in Council

(2) The Governor and Deputy Governors shall devote their whole time to the affairs of the Bank, and shall receive such salaries and allowances as may be determined by the Central Board, with the approval of the Governor-General in Council

(3) A Deputy Governor and the Director nominated under clause (*d*) of sub-section (*1*) may attend any meeting of the Central Board and take part in its deliberations but shall not be entitled to vote

. Provided that when the Governor is absent a Deputy Governor authorized by him in this behalf in writing may vote for him

(4) The Governor and a Deputy Governor shall hold office for such term not exceeding five years as the Governor General in Council may fix when appointing them, and shall be eligible for re appointment

A Director nominated under clause (*b*) or elected under clause (*c*) of sub section (1) shall hold office for five years, or thereafter until his successor shall have been duly nominated or elected, and subject to the provisions of section 10, shall be eligible for re nomination or re election

A Director nominated under clause (*d*) of sub-section (1) shall hold office during the pleasure of the Governor General in Council

(5) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Board.

[illegible] that one of the most vital points [illegible] be the personality and qualifica-

[illegible] on the chief executive officers of [illegible] outset be necessary that there [illegible] nended this clause so as to make

their appointment obligatory Many of us wished to add a provision that of the three highest posts thus created (viz the Governor and two Deputy Governors) one at least should be an Indian We have, however, been informed that the official mem[illegible] a definite assurance in the Legislature [illegible] presentations and that it will be its [illegible] earlier that at least one of the three [illegible] th this assurance [illegible] proposals of this clause as regards the [illegible] uty Governors on the understanding that [illegible] the Governor General in Council and the [illegible] is made in short that the practice be ter[illegible] ment of the Managing Governors of the [illegible] statutory provision has applied should be observed

*Sub clause (1) (b)—We considered whether any addition should be made to this sub-clause in the form of a direction to the Governor General in Council as to the manner in which he should exercise his power of nomination We have been assured that it is intended that this power shall be used to ensure that territorial or economic interests which have not secured adequate representation in the elections shall have such inadequacy corrected by this means We do not consider it appropriate to embody in the statute any specific provision for the fulfilment of this [illegible]

*Sub-clause (2).—We have made an alteration in the wording here. In view of the Government's interest in the financial earnings of the Bank we consider that it should have a voice in fixing the salaries paid to the chief executive officers

*Sub-clause (4)—We recommend that nominated Directors should hold office for five years in the same way as elected Directors"—*Report of the Select Committee*

Local Boards their constitution and functions

9. (1) A Local Board shall be constituted for each of the five areas specified in the First Schedule, and shall consist of—

(*a*) five members elected from amongst themselves by the shareholders who are registered on the register for that area and are qualified to vote, and

(*b*) not more than three members nominated by the Central Board from amongst the shareholders registered on the register for that area, who may be nominated at any time

Provided that the Central Board shall in exercising this power of nomination aim at securing the representation of territorial or economic interests not already represented, and in particular the representation of agricultural interests and the interests of co-operative banks

(2) At an election of members of a Local Board for any area, any shareholder who has been registered on the register for that area, for a period of not less than six months ending with the date of the election, as holding five shares shall have one vote, and each shareholder so registered as having more than five shares shall have one vote for each five shares but subject to a maximum of ten votes, and such votes may be exercised by proxy appointed on each occasion for that purpose, such proxy being himself a shareholder entitled to vote at the election and not being an employee of the Bank

(3) The members of a Local Board shall hold office until they vacate it under sub-section (6) and, subject to the provisions of section 10, shall be eligible for re-election or re nomination, as the case may be

(4) At any time within three months of the day on which the Directors representing the shareholders on any register are due to retire under the provisions of this Act, the Central Board shall direct an election to be held

of members of the Local Board concerned, and shall specify a date from which the registration of transfers from and to the register shall be suspended until the election has taken place

(5) On the issue of such direction the Loc[illegible] date of the election and shall publish a list of shares, with the dates on which their shares [illegible] registered addresses, and such list shall be available for purchase not less than three weeks before the date fixed for the election.

(6) The names of the persons elected shall be notified to the Central Board which shall thereupon proceed to make any nominations permitted by clause (*b*) of sub-section (1) it may then decide to make and shall fix the date on which the outgoing members of the Local Board shall vacate office, and the incoming members shall be deemed to have assumed office on that date

(7) The elected members of a Local Board shall, as soon as may be after they have been elected, elect from amongst themselves one or two persons, as the case may be, to be Directors representing the shareholders on the register for the area for which the Board is constituted

(8) A Local Board shall advise the Central Board on such matters as may be generally or specifically referred to it and shall perform such duties as the Board may, by regulations, delegate to it

Notes — Sub-Clause (1) (b) —We have filled in an obvious lacuna in this sub clause and in the new proviso which we have added, we have indicated clearly for the guidance of the Central Board, the object with which the power of nominating three members to each local board has been conferred on that day

Sub Clause (2) —We have reduced the value of a voting qualification from two shares of Rs 500 each to five shares of Rs 100 each

' We have included a provision for the exercise of shareholders' votes by proxy [illegible] have, however, thought it desirable to include [illegible] may hold proxies for this purpose, and [illegible] it clear that a shareholder should not be [illegible] at proxies should not be accepted if made out under a general power of attorney,

Sub Clauses (4) and (5) —"We consider it essential for the convenience of the shareholders that the Bank should give adequate notice of election to the Local Boards and publish a list of shareholders which should be available on purchase For the latter purpose the Bank must have power to suspend the registration of transfers for a reasonable period preceding the election We have made amendments to give effect to those purposes

' The other amendments suggested by us in this clause are of a drafting nature only '—*Report of the Select Committee*

Disqualifications of Directors *and members of Local Board*

10 (1) No person may be a Director or *a member of a Local Board who*—

(*a*) is a salaried government official or a salaried official of a State in India, or

(*b*) is, or at any time has been, adjudicated an insolvent, or has suspended payment or has compounded with his creditors, or

(*c*) is found lunatic or becomes of unsound mind, or

(*d*) is an officer or employee of any bank, or

(*e*) is a director of any Bank, other than a Bank which is a society registered or deemed to be registered under the Co operative Societies Act, 1912,* or any other law for the time being in force in British India relating to co operative societies

(2) No two persons who are partners of the same mercantile firm or are directors of the same private company or one of whom is the general agent of or holds a power of procuration from the other, or from a mercantile firm

* Act II of 1912

of which the other is a partner, may be Directors or members of the same Local Board at the same time.

(3) Nothing in clause (*a*), clause (*d*) or clause (*e*) of sub section (1) shall apply to the Governor, or to a Deputy Governor or to the Director nominated under clause (*d*) of sub section (1) of section 8

Notes—'**Sub Clause (2)**—We have added in this sub-clause certain additional disqualifications taken from the Indian Companies Act which seem to us to be necessary We have omitted the proviso to this sub clause as we consider that the objections to a state official being appointed would be no less than to any other Government official

'**Sub-Clause (3)**—We have proposed the insertion of a new sub clause on the lines of a similar provision in the Imperial Bank of India Act We have also suggested *in this clause certain minor* amendments of a drafting nature "—*Report of the Select Committee*

Removal from and vacation of office

11. (1) The Governor General in Council may remove from office the Governor, or a Deputy Governor or any nominated or elected Director.

Provided that in the case of a Director nominated or elected under clause (*b*) or clause (*c*) of sub section (1) of section 8 this power shall be exercised only on a resolution passed by the Central Board in that behalf by a majority consisting of not less than nine Directors

(2) A Director nominated or elected under clause (*b*) or clause (*c*) of sub-section (1) of section 8, and any member of a Local Board shall cease to hold office, if at any time after six months from the date of his nomination or election, he is not registered as a holder of unencumbered shares of the Bank of a nominal value of not less than five thousand rupees, or if he ceases to hold unencumbered shares of that value, aud any such Director shall cease to hold office if without leave from the Governor General in Council he absents himself from three consecutive meetings of the Central Board convened under sub section (1) of section 13

(3) *The Governor General in* Council shall *remove from office* any Director, and the Central Board shall remove from office any member of a Local Board, if such Director or member becomes subject to any of the disqualifications specified in sub-section (1) or sub section (2) of section 10

(4) A Director or member of a Local Board removed or ceasing to hold office under the foregoing sub-sections shall not be eligible for re appointment either as Director or as member of a Local Board until the expiry of the term for which his appointment was made

(5) The appointment, nomination or election as Director or member of a Local Board of any person who is a member of the Indian Legislature or of a *Local Legislature shall be void unless, within two months of the date of his* appointment, nomination or election, he ceases to be such member, and if any Director or member of a Local Board elected or nominated as a member of any such Legislature, he shall cease to be a Director or member of the Local Board *as from the date of such election or nomination, as the case may be*

(6) A Director may resign his office to the Governor General in Council and a member of a Local Board may resign his office to the Central Board, and

... of the highest importance that Directors ... ready to give adequate ... sub-clause so as to make ... also deleted as un

necessary certain words in this sub clause regulating the period within which directors should be required to acquire the prescribed number of qualifying shares as the addition which we have suggested in new clause 4 (8) should obviate any difficulty

'**Sub Clause (4)**.—We have inserted a new sub clause (4) We feel that in the interest of the Bank a provision on these lines is desirable

'**Sub Clause (5)** —We have increased the period within which a member of the Legislature must vacate office To limit this to one month would, in our opinion, present practical difficulties '—*Report of the Select Committee*

Casual vacancies and absences

12. (1) If the Governor or a Deputy Governor by infirmity or otherwise is rendered incapable of executing his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Governor General in Council may, after consideration of the recommendations made by the Central Board in this behalf, appoint another person to officiate for him, and such person may, notwithstanding anything contained in clause (*d*) of sub section (1) of section 10, be an officer of the Bank

(2) If an elected Director is for any reason unable to attend a particular meeting of the Central Board, the elected members of the Local Board of the area which he represents may elect one of their numbers to take his place, and for the purposes of that meeting the substitute so elected shall have all the powers of the absent Director

(3) Where any casual vacancy in the office of any member of a Local Board occurs otherwise than by the occurrence of a vacancy in the office of a Director elected by the Local Board the Central Board may nominate thereto any qualified person recommended by the elected members of the Local Board

(4) Where any casual vacancy occurs in the office of a Director other than the vacancies provided for in sub section (1), the vacancy shall be filled in the case of a nominated Director by nomination, and in the case of an elected Director by election held in the manner provided in section 9 for the election of Directors

Provided that before such election is made the resulting vacancy if any, in the Local Board and any vacancy in the office of an elected member of such Board which may have been filled by a member nominated under sub section (3) shall be filled by election held as nearly as may be in the manner provided in section 9 for the election of members of a Local Board

(5) A person nominated or elected under this section to fill a casual vacancy shall, subject to the proviso contained in sub section (4), hold office for the unexpired portion of the term of his predecessor

Notes —'**Sub Clause (1)** —We have re arranged the provisions of these sub [illegible]

Board to fill the vacancy in the Central Board In the case of a vacancy of an elected member of a Local Board who is not also a member of the Central Board we consider that it would suffice for such a vacancy to be filled by co option until such time as the Local Board is called upon to fulfil its function of electing a member to the Central Board Before that is done, the co-opted member should be replaced by an elected member "—*Report of the Select Committee*

Meetings of the Central Board

13 (1) Meetings of the Central Board shall be convened by the Governor at least six times in each year and at least once in each quarter.

(2) Any three Directors may require the Governor to convene a meeting of the Central Board at any time and the Governor shall forthwith convene a meeting accordingly

(3) The Governor, or in his absence the Deputy Governor authorized by the Governor under the proviso to sub-section (3) of section 8 to vote for him shall preside at meetings of the Central Board, and, in the event of an equality of votes, shall have a second or casting vote

Notes—'Sub Clause (1)—We have made an amendment consequential to our amendment of clause (6)

'**Sub-Clause (2)**—We think that provision should be made so as to enable any three Directors to convene a meeting of the Central Board We have added this new clause accordingly We considered whether it was necessary to provide what should be a quorum for a directors meeting, but have agreed that this matter should properly be governed by regulations to be made under clause 52"—*Report of the Select Committee*

General meetings

14 (1) A general meeting (hereinafter in this Act referred to as the annual general meeting) shall be held annually at a place where there is an office of the Bank within six weeks from the date on which the annual accounts of the Bank are closed, and a general meeting may be convened by the Central Board at any other time •

Provided that the *annual general meeting shall not be held on two* consecutive occasions at any one place

(2) The shareholders present at a general meeting shall be entitled to discuss the annual accounts the report of the Central Board on the working of the Bank throughout the year and the auditors' report on the annual balance sheet and accounts

Every shareholder shall be entitled to attend at any general meeting and each shareholder who has been registered on any register, for a period of not less than six months ending with the date of the meeting, as holding five or more shares shall have one vote and on a poll being demanded each shareholder so registered shall have one vote for each five shares, but subject to a maximum of ten votes and such votes may be exercised by proxy appointed on each occasion for that purpose, such proxy being himself a shareholder entitled to vote at the election and not being an officer or employee of the Bank

First constitution of the Central Board

15 (1) *The following provisions shall apply to the first constitution* of the Central Board and notwithstanding anything contained in section 8, the Central Board as constituted in accordance therewith shall be deemed to be duly constituted in accordance with this Act

(2) The first Governor and the first Deputy Governor or Deputy Governors shall be appointed by the Governor General in Council on his own initiative, and shall receive such salaries and allowances as he may determine

(3) The first eight Directors representing the shareholders on the various registers shall be nominated by the Governor General in Council from the areas served respectively by those registers, and the Directors so nominated shall hold office until their successors shall have been duly elected as provided in sub-section (4)

(4) On the expiry of each successive period of twelve months after the nomination of Directors under sub-section (3) two Directors shall be elected *in the manner provided in section 9 until all the Directors so nominated* have been replaced by elected Directors holding office in accordance with section 8 The register in respect of which the election is to be held shall be selected by lot from among the registers still represented by nominated Directors, and for the purposes of such lot the Madras and Rangoon registers shall be treated as if they comprised one register only

[illegible] —We have re-drafted these sub-clauses on lines [illegible] on the original draft of these sub- [illegible] of replacement, and for a quicker [illegible]

"As regards the general purpose of this sub clause the non-official members of the committee have made it clear that they would not consider anything less than 75 per cent of the voting Directors as affording a proper representation of Indians We have received an assurance on behalf of the Government from the Government members of the committee that the Governor General in Council will exercise his powers so as to ensure the proper representation of Indians on the first Board "—*Report of the Select Committee*

First constitution of Local Boards

16 As soon as may be after the commencement of this Act, the Central Board shall direct elections to be held and may make nominations, in order to constitute Local Boards in accordance with the provisions of section 9, and the members of such Local Boards shall hold office up to the date fixed under sub-section (6) of section 9, but shall not exercise any right under sub section (7) of that section

Business which the Bank may transact

17 The Bank shall be authorized to carry on and transact the several kinds of business hereinafter specified, namely —

(1) the accepting of money on deposit without interest from, and the collection of money for, the Secretary of State in Council, the Governor General in Council, Local Governments, States in India, local authorities, Banks and any other persons ,

(2) (*a*) the purchase sale and re discount of bills of exchange and promissory notes drawn on and payable in India and arising out of *bona fide* commercial or trade transactions bearing two or more good signatures, one of which shall be that of a scheduled Bank, and maturing within ninety days from the date of such purchase or re discount, exclusive of days of grace ,

(*b*) the purchase, sale and re discount of bills of exchange and promissory notes drawn and payable in India and bearing two or more good signatures, one of which shall be that of a scheduled Bank, or a provincial co operative Bank, and drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops, and maturing within nine months from the date of such purchase or re discount, exclusive of days of grace ,

(*c*) the purchase, sale and re discount of bills of exchange and promissory notes drawn and payable in India and bearing the signature of a scheduled Bank, and issued or drawn for the purpose of holding or trading in securities of the Government of India or a Local Government, or such securities of States in India as may be specified in this behalf by the Governor General in Council on the recommendation of the Central Board, and maturing within ninety days from the date of such purchase or re-discount, exclusive of days of grace ,

(3) (*a*) the purchase from and sale to scheduled Banks of sterling in amounts of not less then the equivalent of one lakh of rupees ,

(*b*) the purchase, sale and re discount of bills of exchange (including treasury bills) drawn in or on any place in the United Kingdom and maturing within ninety days from the date of purchase, provided that no such purchase, sale or re discount shall be made in India except with a scheduled Bank , and

(*c*) the keeping of balances with Banks in the United Kingdom ,

(4) the making to States in India local authorities scheduled Banks and provincial co operative Banks of loans and advances, repayable on demand or on the expiry of fixed periods not exceeding ninety days, against the security of—

(*a*) stocks, funds and securities (other than immovable property) in which a trustee is authorized to invest trust money by any Act of Parliament or by any law for the time being in force in British India ,

(*b*) gold or silver or documents of title to the same ,

(*c*) such bills of exchange and promissory notes as are eligible for purchase or re discount by the Bank ,

(*d*) promissory notes of any scheduled Bank or a provincial co operative Bank, supported by documents of title to goods which have been transferred, assigned or pledged to any such Bank as security for a cash credit or overdraft granted for *bona fide* commercial or trade transactions or for the purpose of financing seasonal agricultural operations or the marketing of crops ,

(5) the making to the Governor General in Council and to such Local Governments as may have the custody and management of their own provincial revenues of advances repayable in each case not later than three monthes from the date of the making of the advance ,

(6) the issue of demand drafts made payable at its own offices or agencies and the making issue and circulation of Bank post bills ,

(7) the purchase and sale of Government securities of the United Kingdom maturing within ten years from the date of such purchase ,

(8) the purchase and sale of securities of the Government of India or of a Local Government of any maturity or of such securities of a local authority in British India or of such States in India as may be specified in this behalf by the Governor General in Council on the recommendation of the Central Board

Provided that securities fully guaranteed as to principal and interest by the Government of India a Local Government a local authority or a State in India shall be deemed for the purposes of this clause to be securities of such Government authority or State

Provided further that the amount of such securities held at any time in the Banking Department shall be so regulated that—

(*a*) the total value of such securities shall not exceed the aggregate amount of the share capital of the Bank the Reserve Fund and three fifths of liabilities of the Banking Department in respect of deposits ,

(*b*) the value of such securities maturing after one year shall not exceed the aggregate amouut of the share capital of the Bank the Reserve Find and two fifths of the *liabilities of the Banking Department in respect of deposits* and

(*c*) the value of such securities maturing after ten years shall not exceed the aggregate amount of the share capital of the Bank and the Reserve Fund and one fifth of the liabilities of the Banking Department in respect of deposits

(9) the custody of monies, securities and other articles of value and the collection of the proceeds whether principal, interest or dividends of any such securities ,

(10) the sale and realisation of all property whether movable or immovable which may in any way come into the possession of the Bank in satisfaction, or part satisfaction of any of its claims ,

(11) the acting as agent for the Secretary of State in Council the Governor General in Council or any Local Government or local authority or State in India in the transaction of any of the following kinds of business namely —

(*a*) the purchase and sale of gold or silver ,

(*b*) the purchase sale transfer and custody of bills of exchange, securities or shares in any company

(*c*) the collection of the proceeds whether principal interest or dividends of any securities or shares ,

(*d*) the remittance of such proceeds at the risk of the principal by bills of exchange payable either in India or elsewhere ,

(*e*) the management of public debt ,

(12) the purchase [illegible]

(13) the opening [illegible]

with, and the acting a [illegible]

currency authority of any country under the law for the time being in force in

that country or any international Bank formed by such Banks, and the investing of the funds of the Bank in the shares of any such international Bank ;

(14) the borrowing of money for a period not exceeding one month for the purposes of the business of the Bank, and the giving of security for money so borrowed :

Provided that no money shall be borrowed under this clause from any person in India other than a scheduled Bank, or from any person outside India other than a Bank which is the principal currency authority of any country under the law for the time being in force in that country :

Provided further that the total amount of such borrowings from persons in India shall not at any time exceed the amount of the share capital of the Bank ;

(15) the making and issue of bank notes subject to the provisions of this Act, and

(16) generally, the doing of all such matters and things as may be incidental to, or consequential upon, the exercise of its powers or the discharge of its duties under this Act

Notes —"Sub Clause (1) —We think that it is desirable to make it clear that the Reserve Bank can accept money on deposit from local authorities. We have amended the sub-clause accordingly

"Sub Clause (2) (a) —We have added the word 'on" to enable the Bank to discount rupee import bills in the event of such instruments coming into existence in the future as contemplated by the Central Banking Enquiry Committee

"Sub Clause (2) (b) —We consider that the period of six months is unduly restrictive in the case of agricultural bills;and following the practice in the United States of America, we have raised the period of six to nine months We have also omitted the proviso in the original clause as being undesirable in the present conditions of India

"Sub Clause (3) —We have re arranged this sub clause and divided it into three sub clauses 3 (a), (b) and (c) In sub clause 3 (a) we have restricted the operations of the Reserve Bank to scheduled banks only, as we do not think the Bank would normally require to transact such business with other persons, while we have separately provided in clause 18 for relaxing the restrictions in this sub clause on special occasions

"On the other hand in sub-clause 3 (b) we have removed any restrictions on the persons with whom the [illegible]

"We have altered th[illegible]
in our note on claus[illegible]
to sterling currency of [illegible]

"Sub Clause (4) —We consider that in ordinary circumstances dealings under this sub-clause should be restricted to Banks, public authorities and Indian States We have made provision in clause 18 for its extension where this is considered desirable on special occasions

"Sub-Clause (4) (b) —We have included silver

"Sub Clause (4) (c) —We have omitted the proviso for the same reasons which led us to omit the proviso to sub-clause (2) (b) of this clause

"Sub Clause (4) (d) —We have omitted this as unnecessary in consequence of the change made in 17 (4) (c)

"Sub Clause (4) (e) —We have omitted the proviso because we consider that there is little likelihood of the bill habit developing within 5 years to such an extent as to make it possible to discontinue this practice within that limit

[illegible]

(*b*) gold or silver or documents of title to the same,

(*c*) such bills of exchange and promissory notes as are eligible for purchase or re discount by the Bank,

(*d*) promissory notes of any scheduled Bank or a provincial co operative Bank, supported by documents of title to goods which have been transferred, assigned or pledged to any such Bank as security for a cash credit or overdraft granted for *bona fide* commercial or trade transactions, or for the purpose of fin'ancing seasonal agricultural operations or the marketing of crops,

(5) the making to the Governor General in Coucil and to such Local Governments as may have the custody and management of their own provincial revenues of advances repayable in each case not later than three monthes from the date of the making of the advance,

(6) the issue of demand drafts made payable at its own offices or agencies and the making, issue and circulation of Bank post bills,

(7) the purchase and sale of Government securities of the United Kingdom maturing within ten years from the date of such purchase,

(8) the purchase and sale of securities of the Government of India or of a Local Government of any maturity or of such securities of a local authority in British India or of such States in India as may be specified in this behalf by the Governor General in Council on the recommendation of the Central Board

Provided that securities fully guaranteed as to principal and interest by the Government of India, a Local Government, a local authority or a State in India shall be deemed for the purposes of this clause to be securities of such Government authority or State

Provided further that the amount of such securities held at any time in the Banking Department shall be so regulated that—

(*a*) the total value of such securities shall not exceed the aggregate amount of the share capital of the Bank the Reserve Fund and three fifths of liabilities of the Banking Department in respect of deposits,

(*b*) the value of such securities maturing after one year shall not exceed the aggregate amouut of the share capital of the Bank, the Reserve Find and two fifths of the liabilities of the Banking Department in respect of deposits, and

(*c*) the value of such securities maturing after ten years shall not exceed the aggregate amount of the share capital of the Bank and the Reserve Fund and one fifth of the liabilities of the Banking Department in respect of deposits,

(9) the custody of monies, securities and other articles of value, and the collection of the proceeds, whether principal, interest or dividends of any such securities,

(10) the sale and realisation of all property, whether movable or immovable, which may in any way come into the possession of the Bank in satisfaction, or part-satisfaction of any of its claims,

(11) the acting as agent for the Secretary of State in Council, the Governor General in Council or any Local Government, or local authority or State in India in the transaction of any of the following kinds of business, namely —

(*a*) the purchase, and sale of gold or silver,

(*b*) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company,

(*c*) the collection of the proceeds, whether principal, interest or dividends of any securities or shares,

(*d*) the remittance of such proceeds at the risk of the principal, by bills of exchange payable either in India or elsewhere,

(*e*) the management of public debt,

(12) the purchase and sale of gold coin and bullion,

(13) the opening of an account with or the making of an agency agreement with, and the acting as agent or correspondent of, a Bank which is the principal currency authority of any country under the law for the time being in force in

that country or any international Bank formed by such Banks, and the investing of the funds of the Bank in the shares of any such international Bank ;

(14) the borrowing of money for a period not exceeding one month for the purposes of the business of the Bank, and the giving of security for money so borrowed :

Provided that no money shall be borrowed under this clause from any person in India other than a scheduled Bank, or from any person outside India other than a Bank which is the principal currency authority of any country under the law for the time being in force in that country :

Provided further that the total amount of such borrowings from persons in India shall not at any time exceed the amount of the share capital of the Bank ,

(15) the making and issue of bank notes subject to the provisions of this Act ; and

(16) generally, the doing of all such matters and things as may be inciden tal to, or consequential upon, the exercise of its powers or the discharge of its duties under this Act

Notes —"Sub Clause (1) —We think that it is desirab e to make it clear that the Reserve Bank can accept money on deposit from local authorities We have amended the sub clause accordingly

' Sub Clause (2) (a) —We have added the word 'on" to enable the Bank to discount rupee import bills in the event of such instruments coming into existence in the future as contemplated by the Central Banking Enquiry Committee

'Sub Clause (2) (b) —We consider that the period of six months is unduly restrictive in the case of agricultural bills;and following the practice in the United States of America, we have raised the period of six to nine months We have also omitted the proviso in the original clause as being undesirable in the present conditions of India

' Sub Clause (3) —We have re arranged this sub clause and divided it into three sub clauses 3 (a), (b) and (c) In sub cla [illegible]
operations of the Reserve Bank to scheduled [illegible]
Bank would normally require to transact such [illegible]
we have separately provided in clause 18 for [illegible]
sub-clause on special occasions

' On the other hand in sub clause 3 (b) we have removed any restrictions on the [illegible]

"Sub Clause (4) —We consider that in ordinary circumstances dealings under this sub-clause should be restricted to Banks, public authorities and Indian States We have made provision in clause 18 for its extension where this is considered desirable on special occasions

' Sub-Clause (4) (b) —We have included silver

' Sub-Clause (4) (c) —We have omitted the proviso for the same reasons which led us to omit the proviso to sub-clause (2) (b) of this clause

"Sub Clause (4) (d) —We have omitted this as unnecessary in consequence of the change made in 17 (4) (c)

' Sub Clause (4) (e) —We have omitted the proviso because we consider that there is little likelihood of the bill habit developing within 5 years to such an extent as to make it possible to discontinue this practice within that limit

be offered on the open market even though the Reserve Bank may take them up We have therefore limited the period to three months We have enlarged the scope of this clause so as to include advances to such Local Governments as may have the custody and management of their own provincial revenues

"**Sub Clause (6)** —We were informed that Bank post bills are not made payable elsewhere than at the office of issue and have amended the sub clause so as to state the existing practice correctly

Sub Clause (7) —We consider that the view of the limitation of holdings to securities of the British Government [*Vide* our note on Sub-clause 2 (*d*)] this provision is unduly restrictive and that the Bank should be empowered to purchase such securities up to a maturity of ten years We must make it clear that our intention is that this should be merely an enabling clause, and that in practice the Bank should arrange for its holding of securities to be as liquid as possible

"**Sub Clause (8)** —We consider that the sub clause as originally drafted was unduly restrictive and would not allow sufficient facilities for open market operations by the Bank We have therefore modified the amounts in the proviso but wish to make the same point h
namely, that these figures are t
circumstances, the Bank must k
operate well below these limits
by Provincial Governments, there is no reason for restricting the maturity of securities of a Local Government to ten ye
and of States in India we think
to their maturity, their eligibility
approval of the Government of Ir
to be considered on its merits We
'We also wish to provide that
to principal and interest by any au
the equivalent of a security of such authority

"**Sub Clause (9)** —We have not restricted the operation of this sub clause to scheduled Banks or public authorities because we consider there might be cases in which such restriction would operate inconveniently in practice At the same time we wish to make it clear that in our view this power should not be exercised by the Bank so as to compete in its normal business with the commercial business of other Banks It should be the duty of the Government to watch this and to see that the interests of other Banks are in practice protected

"**Sub Clause 13** —We have no reason why this should be restricted to sterling standard countries It is desirable to promote co operation between Central Banks, and we therefore consider that the Reserve Bank should be empowered to act as the agent of any Central Bank and *vice versa*"—*Report of the Select Committee*

Powers of direct discount

18 When, in the opinion of the Central Board or, where the powers and functions of the Central Board under this section have been delegated to a committee of the Central Board or to the Governor, in the opinion of such committee or of the Governor as the case may be, a special occasion has arisen making it necessary or expedient that action should be taken under this section for the purpose of regulating credit in the interests of Indian trade, commerce, industry and agriculture, the Bank may, notwithstanding any limitation contained in sub-clause (*a*) and (*b*) of clause (2) or sub-clause (*a*) or (*b*) of clause (3) or clause (4) of section 17

(1) purchase, sale or discount any of the bills or exchange of promissory notes specified in sub-clause (*a*) or (*b*) of clause (2) or sub clause (*b*) of clause (3) of that section though such bill or promissory note does not bear the signature of a scheduled Bank or a provincial co-operative Bank, or

(2) purchase or sell sterling in amounts of not less than the equivalent of one lakh of rupees, or

(3) make loans or advances repayable on demand or on the expiry of fixed periods not exceeding ninety days against the various forms of security specified in clause (4) of that section

Provided that a committee of the Board or the Governor shall not, save in cases of special urgency authorize action under this section without prior consultation with the Central Board and that in all cases action so authorized shall be reported to the members of the Central Board forthwith

Notes —' We have added words to this clause so as to make it clear that although the exercise of these powers should not necessarily be regarded as limited to occasions of so critical a nature as to justify their description as an emergency, nevertheless they are not to be used for the normal operations of the Bank and should be restricted to special occasions We have also modified it so as to provide for the delegation of the powers of the Board to a Committee of the Board as well as to the Governor We have further thought it desirable to make it clear that although in order to make quick action possible the Board may delegate its special powers under this section to a committee or to the Governor nevertheless such delegated powers should not normally be utilised without previous consultation with the Board and that if in cases of special urgency such previous consultation is impossible the members of the Board shall be informed at once so that if they think fit, they can convene a special meeting to have the policy considered and decided —*Report of the Select Committee*

Business which the Bank may not transact

19 Save as otherwise provided in sections 17,18 and 45, the Bank may not—

(1) engage in trade or otherwise have a direct interest in any commercial, industrial or other undertaking except such interest as it may in any way acquire in the course of the satisfaction of any of its claims provided that all such interests shall be disposed of at the earliest possible moment ,

(2) purchase its own shares or the shares of any other Bank or of any company, or grant loans upon the security of any such shares ,

(3) advance money on mortgage of, or otherwise on the security of, immovable property or documents of title relating thereto or become the owner of immovable property except so far as is necessary for its own business premises and residences for its officers and servants ,

(4) make loans or advances ,

(5) draw or accept bills payable otherwise than on demand ,

(6) allow interest on deposits or current accounts

CHAPTER III

Central Banking Functions

Obligation of the Bank to transact Government business

20 The Bank shall undertake to accept monies for account of the Secretary of State in Council and the Governor General in Council and such Local Governments as may have the custody and management of their own provincial revenues and such States in India as may be approved of and notified by the Governor General in Council in the *Gazette of India* and to make payments up to the amount standing to the credit of their accounts respectively, and to carry out their exchange, remittance and other banking operations, including the management of the public debt

Bank to have the right to transact Government business in India

21 (1) The Governor General in Council and such Local Governments as may have the custody and management of ... ist the ... upon ... ge and banking transactions in India a... nterest all their cash balances with the Bank

Provided that nothing in this sub section shall prevent the Governor General in Council or any Local Government from carrying on money transactions at places where the Bank has no branches or agencies, and the Governor General in Council and Local Governments may hold at such places such balances as they may require

(2) The Governor General in Council and each Local Government shall entrust the Bank, on such conditions as may be agreed upon, with the management of the public debt and with the issue of any new loans

(3) In the event of any failure to reach agreement on the conditions referred to in this section the Governor General in Council shall decide what the conditions shall be

(4) Any agreement made under this section to which the Governor General in Council or any Local Government is a party shall be laid, as soon as may be after it is made, before the Central Legislature and in the case of a Local Government before its Local Legislature also

Notes — 'We think that it should be made clear that the Governor-General in Council should have the final power of decision regarding the terms on which these transactions are to be carried out in the unlikely event of a failure to settle them by agreement We also consider that the agreement to be entered into with the Reserve Bank in view of its importance, should be laid on the table of both Houses ' —*Report of the Select Committee*

Right to issue Bank notes

22 (1) The Bank shall have the sole right to issue bank notes in British India and may, for a period which shall be fixed by the Governor General in Council on the recomendation of the Central Board, issue currency notes of the Government of India supplied to it by the Governor General in Council and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears apply to all currency notes of the Government of India issued either by the Governor General in Council or by the Bank in like manner as if such currency notes were bank notes and references in this Act to bank notes shall be construed accordingly

(2) On and from the date on which this Chapter comes into force the Governor General in Council shall not issue any currency notes

Issue Department

23 (1) The issue of bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 34

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve

Denominations of notes

24 Bank notes shall be of the denominational values of five rupees, ten rupees, fifty rupees, one hundred rupees five hundred rupees, one thousand rupees and ten thousand rupees, unless otherwise directed by the Governor General in Council on the recommendation of the Central Board

Form of Bank notes

25 The design form and material of bank notes shall be such as may be approved by the Governor General in Council after consideration of the recommendations made by the Central Board

Notes — We have added a few words so as to make it clear that the primary duty for making proposals as to the form and design of notes rest with the Central Board We consider that sudden and drastic changes in the design and form of notes should not be made —*Report of the Select Committee*

Legal tender character of notes

26 (1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in British India in payment or on account for the amount expressed therein, and shall be guaranteed by the Governor General in Council.

(2) On recommendation of the Central Board the Governor General in Council may by notification in the *Gazette of India*, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank

Re issue of notes

27 The Bank shall not re issue bank notes which are torn, defacted or excessively soiled

Recovery of notes lost, stolen, mutilated or imperfect

28 Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the Governor General in Council or the Bank the value of any lost, stolen, multilated or imperfect currency note of the Government of India or bank note ·

Provided that the Bank may, with the previous sanction of the Governor General in Council, prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace and the rules made under this proviso shall be laid on the table of both Houses of the Central Legislature

Bank exempt from stamp duty on bank notes

29 The Bank shall not be liable to the payment of any stamp duty under the Indian S amp Act of 1899 in respect of Bank notes issued by it

Powers of Governor General in Council to supersede Central Board

30 (1) If in the opinion of the Governor General in Council the Bank fails to carry out any of the obligations imposed on it by or under this Act, he may, by notification in the *Gazette of India*, declare the Central Board to be superseded,and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the Governor General in Council may determine, and such agency may exercise the powers and do all acts and things which may be exercised or done by the Central Board under this Act

(2) When action is taken under this section the Governor General in Coun[illegible]

[illegible] tion superseding the Board

Issue of demand bills and notes

31 No person in British India other than the Bank or, as expressly authorized by this Act, the Governor General in Council shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person ·

Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent

Penalty

32. (1) Any person contravening the provisions of section 31 shall be punishable with fine which may extend to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed

(2) No prosecution under this section shall be instituted except on complaint made by the Bank

Provided that nothing in this sub s ction ı ll in Council or any Local Government from c rr, places where the Bank has no branches or a in Council and Local Governments may hold they may require

(2) The Governor General in Council ı l entrust the Bank, on such conditions as n ay I ment of the public debt and with the is ue f

(3) In the event of any failure to reach to in this section the Governor General in C tions shall be

(4) Any agreement made under this s in Council or any Local Government is a p after it is made, before the Central I e l Government before its Local Legislature

Notes — 'We think that it sho ld b in Council should have the final po ver of these transactions are to be carried out them by agreement We also consider th Reserve Bank, in view of its importance —*Report of the Select Committee*

22 (1) The Bank shall have th India fixed b

Right to issue Bank notes

the recomendation of the Central Bo ment of India supplied to it by th (provisions of this Act applicable to l tion appears, apply to all curren y either by the Governor General ı ı C if such currency notes were banl no shall be construed accordingly

(2) On and from the date Governor General in Council sl

23 (1) The issue of banl ı l

Issue Department

ment, and the assets of the Is u t other than the liabilities of tl section 34

(2) The Issue Departm n ment or to any other person such coin, bullion or securiti the Reserve

24 Bank notes shall b

Denominations of notes

thousand rupees, unless oth r on the recommendation of tl

25 The design form a

Form of Bank notes

made by the Central Boar

Notes—[1] We have a duty for making proposal Board We cons der th notes should not be ma l —

Legal tender character of notes

26 (1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in British India in payment or on account for the amount expressed therein, and shall be guaranteed by the Governor General in Council.

(2) On recommendation of the Central Board the Governor General in Council may by notification in the *Gazette of India*, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank

Re issue of notes

27 The Bank shall not re issue bank notes which are torn, defacted or excessively soiled

Recovery of notes lost, stolen, mutilated or imperfect

28 Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the Governor General in Council or the Bank the value of any lost, stolen, multilated or imperfect currency note of the Government of India or bank note

Provided that the Bank may, with the previous sanction of the Governor General in Council, prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace and the rules made under this proviso shall be laid on the table of both Houses of the Central Legislature

Bank exempt from stamp duty on bank notes

29 The Bank shall not be liable to the payment of any stamp duty under the Indian Stamp Act of 1899, in respect of Bank notes issued by it

Powers of Governor General in Council to supersede Central Board

30 (1) If in the opinion of the Governor General in Council the Bank fails to carry out any of the obligations imposed on it by or under this Act, he may, by notification in the *Gazette of India* declare the Central Board to be superseded, and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the Governor General in Council may determine, and such agency may exercise the powers and do all acts and things which may be exercised or done by the Central Board under this Act

(2) When action is taken under this section the Governor General in Coun [illegible] tion superseding the Board

Issue of demand bills and notes

31 No person in British India other than the Bank or, as expressly authorized by this Act the Governor General in Council shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person

Provided that cheques or drafts, including hundis, payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff or agent

Penalty

32. (1) Any person contravening the provisions of section 31 shall be punishable with fine which may extend to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed

(2) No prosecution under this section shall be instituted except on complaint made by the Bank

Provided that nothing in this sub section shall prevent the Governor General in Council or any Local Government from carrying on money transactions at places where the Bank has no branches or agencies, and the Governor General in Council and Local Governments may hold at such places such balances as they may require

(2) The Governor General in Council and each Local Government shall entrust the Bank, on such conditions as may be agreed upon, with the management of the public debt and with the issue of any new loans

(3) In the event of any failure to reach agreement on the conditions referred to in this section the Governor General in Council shall decide what the conditions shall be

(4) Any agreement made under this section to which the Governor General in Council or any Local Government is a party shall be laid, as soon as may be after it is made, before the Central Legislature and in the case of a Local Government before its Local Legislature also

Notes — 'We [illegible] General
in Council should [illegible]
these transactions [illegible]
them by agreemer[illegible]
Reserve Bank, in [illegible]
—*Report of the* [illegible]

Right to issue Bank notes

22 (1) The Bank shall have the sole right to issue bank notes in British India, and may, for a period which shall be fixed by the Governor General in Council on the recomendation of the Central Board issue currency notes of the Government of India supplied to it by the Governor General in Council, and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears apply to all currency notes of the Government of India issued either by the Governor General in Council or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly

(2) On and from the date on which this Chapter comes into force the Governor General in Council shall not issue any currency notes

Issue Department

23 (1) The issue of bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 34

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve

Denominations of notes

24 Bank notes shall be of the denominational values of five rupees, ten rupees, fifty rupees, one hundred rupees five hundred rupees, one thousand rupees and ten thousand rupees, unless otherwise directed by the Governor General in Council on the recommendation of the Central Board

Form of Bank notes

25 The design form and material of bank notes shall be such as may be approved by the Governor General in Council after consideration of the recommendations made by the Central Board

Notes — We have added a few words so as to make it clear that the primary duty for making proposals as to the form and design of notes rest with the Central Board We consider that sudden and drastic changes in the design and form of notes should not be made —*Report of the Select Committee*

Legal tender character of notes

26 (1) Subject to the provisions of sub-section (2) every bank note shall be legal tender at any place in British India in payment or on account for the amount expressed therein and shall be guaranteed by the Governor General in Council

(2) On recommendation of the Central Board the Governor General in Council may by notification in the *Gazette of India* declare that with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank

Re issue of notes

27 The Bank shall not re issue bank notes which are torn defaced or excessively soiled

Recovery of notes lost stolen mutilated or imperfect

28 Notwithstanding anything contained in any enactment or rule of law to the contrary no person shall of right be entitled to recover from the Governor General in Council or the Bank the value of any lost stolen, multilated or imperfect currency note of the Government of India or bank note

Provided that the Bank may with the previous sanction of the Governor General in Council prescribe the circumstances in and the conditions and limitations subject to which the value of such currency notes or bank notes may be refunded as of grace and the rules made under this proviso shall be laid on the table of both Houses of the Central Legislature

Bank exempt from stamp duty on bank notes

29 The Bank shall not be liable to the payment of any stamp duty under the Indian S amp Act of 1899 in respect of Bank notes issued by it

Powers of Governor General in Council to supersede Central Board

30 (1) If in the opinion of the Governor General in Council the Bank fails to carry out any of the obligations imposed on it by or under this Act he may by notification in the *Gazette of India* declare the Central Board to be superseded and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the Governor General in Council may determine and such agency may exercise the powers and do all acts and things which may be exercised or done by the Central Board under this Act

(2) When action is taken under this section the Governor General in Coun [illegible] leading to such action and of [illegible] Legislature at the earliest possible [illegible] s from the issue of the notification superseding the Board

Issue of demand bills and notes

31 No person in British India other than the Bank or, as expressly authorized by this Act the Governor General in Council shall draw accept make or issue any bill of exchange hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills hundis or notes payable to bearer on demand of any such person

Provided that cheques or drafts including hundis payable to bearer on demand or otherwise may be drawn on a person s account with a banker, shroff or agent

32 (1) [illegible]

Pe [illegible]

whereof the offence is committed

(2) No prosecution under this section shall be instituted except [illegible]mplai[illegible] made by the Bank

Assets of the Issue Department

33 (1) The assets of the Issue Department shall consist of gold coin, gold bullion, sterling securities rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department as hereinafter defined

(2) Of the total amount of the assets not less than two fifths shall consist of gold coin, gold bullion or sterling securities

Provided that the amount of gold coin and gold bullion shall not at any time be less than forty crores of rupess in value

(3) The remainder of the assets shall be held in rupee coin, Government of India rupee securities of any maturity and such bills of exchange and promissory notes payable in British India as are eligible for purchase by the Bank under sub clause (*a*) or sub clause (*b*) of clause (2) of section 17 or under clause (1) of section 18 .

Provided that the amount held in Government of India rupee securities shall not at any time exceed one fourth of the total amount of the assets or fifty crores of rupees *whichever amount is greater, or, with the previous sanction* of the Governor General in Council, such amount plus a sum of ten crores of rupees

(4) For the purposes of this section, gold coin and gold bullion shall be valued at 8 47512 grains of fine gold per rupee, rupee coin shall be valued at its face value, and securities shall be valued at the market rate for the time being obtaining

any mint or treasury or in transit may be reckoned as part of the assets

(6) For the purposes of this section, the sterling securities which may be held as part of the assets shall be securities of any of the following kinds payable in the currency of the United Kingdom, namely —

(*a*) balances at the credit of the Issue Department with the Bank of England ,

(*b*) bills of exchange bearing two or more good signatures and drawn on and payable at any place in the United Kingdom and having a maturity not exceeding ninety days ,

(*c*) Government securities of the United Kingdom maturing within five years :

Provided that, for a period of two years from the date on which this Chapter comes into force, any of such last mentioned securities may be securities maturing after five years, and the Bank may, at any time before the expiry of that period, dispose of such securities notwithstanding anything contained in section 17

Liabilities of the Issue Department

34 (1) The liabities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation

(2) For the purposes of this section, any currency notes of the Government of India or bank note which has not been presented for payment within forty years from the 1st day of April following the date of its issue shall be deemed not to be in circulation, and the value thereof shall, notwithstanding anything contained in sub section (2) of section 23 be paid by the Issue Department to the Governor General in Council or the Banking Department, as the case [illegible] presented for payment, shall be [illegible] in the case of a curr[illegible] the Governor General

in Council.

Initial assets and liabilities

35 On the date on which this Chapter comes into force the Issue Department shall take over from the Governor General in Council the liability for all the currency notes of the Government of India for the time being in circulation and the Governor General in Council shall transfer to the Issue Department gold coin, gold bullion, sterling securities, rupee coin and rupee securities, to such aggregate amount as is equal to the total of the amount of the liability so transferred The coin, bullion and securities shall be transferred in such proportion as to comply with the requirements of section 33

Provided that the total amount of the gold coin, gold bullion and sterling securities so transferred shall not be less than one half of the whole amount transferred, and that the amount of rupee coin so transferred shall not exceed fifty crores of rupees

Provided further that the whole of the gold coin and gold bullion held by the Governor General in Council in the gold standard reserve and the paper currency reserve at the time of transfer shall be so transferred

Notes—"We have added a proviso to make it clear that at the time of transfer the whole of the gold coin and bullion held by the Governor General in Council in his reserve should be transferred to the Bank"—*Report of the Select Committee*

Method of dealing with fluctuations in rupee coin assets

36 (1) After the close of any financial year in which the minimum amount of rupee coin held in the assets, as shown in any of the weekly accounts of the Issue Department for that year prescribed under sub section (1) of section 53, is greater than fifty crores of rupees or one sixth of the total amount of the assets as shown in that account, whichever may be the greater, the Bank may deliver to the Governor General in Council rupee coin up to the amount [illegible] ainst

[illegible] gold bullion and sterling securities in the assets does not at that time exceed one half [illegible] nent shall be [illegible] as part of [illegible]

(2) After the close of any financial year in which the maximum amount of rupee coin held in the assets, as so shown, is less than fifty crores of rupees or one sixth of the total amount of the assets, as so shown, whichever may be the greater the Governor General in Council shall deliver to the Bank rupee coin up to the amount of such deficiency, but not without its consent exceeding five crores of rupees, against payment of legal tender value

Notes [illegible] which differs from those of [illegible] e left in possession of a large [illegible] it now holds The policy of [illegible] nting for its proceeds involve [illegible] an opportunity to consider"
—*Report of the Select Committee*

Suspension of assets requirements

37. (1) Notwithstanding anything contained in the foregoing provisions, the Bank may, with the previous sanction of the Governor General in Council for periods not exceeding thirty days in the first instance, which may, with the like sanction, be extended from time to time, by periods not [illegible] gold bullion or sterling securi [illegible] section 33 [illegible] shall cease to be operative

Provided that the gold coin and gold bullion held as such assets shall not be reduced below the amount specified in the proviso to sub-section (2) of section 33 so long as any sterling securities remain held as such assets

(2) In respect of any period during which the holding of gold coin, gold bullion and sterling securities is reduced under sub section (1), the Bank shall pay to the Governor General in Council a tax upon the amount by which such holding is reduced below the minimum prescribed by sub section (2) of section 33, and such tax shall be payable at the Bank rate for the time being in force with an addition of one per cent per annum when such holding exceeds thirty two and a half per cent of the total amount of the assets and of a further one and a half per cent per annum in respect of every further decrease of two and a half per cent or part of such decrease :

Provided that the tax shall not in any event be payable at a rate less than six per cent per annum

Obligations of Government and the Bank in respect of rupee coin

38 The Governor General in Council shall undertake not to re issue any rupee coin delivered under section 36 nor to put into circulation any rupees, except through the Bank and as provided in that section, and the Bank shall undertake not to dispose of rupee coin otherwise than for the purposes of circulation or by delivery to the Governor General in Council under that section.

Obligation to supply different forms of currency

39 (1) The Bank shall issue rupee coin on demand in exchange for bank notes and currency notes of the Government of India, and shall issue currency notes or Bank notes on demand in exchange for coin which is legal tender under the Indian Coinage Act, 1906

(2) The Bank shall in exchange for currency notes or bank notes of five rupees or upwards supply currency notes or bank notes of lower value or other coins which are legal tender under the Indian Coinage Act, 1906, in such quan
circulation, and the
the Bank on demand,
supply such coins, the
Bank shall be released from its obligations to supply them to the public

Obligation to sell sterling

40 The Bank shall sell, to any person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi, Madras or Rangoon and pays the purchase price in legal tender currency, sterling for immediate delivery in London, at a rate not below one shilling and five pence and forty nine sixty fourths of a penny for a rupee

Provided that no person shall be entitled to demand to buy an amount of sterling less than ten thousand pounds

Obligation to buy sterling

41 The Bank shall buy from any person who makes a demand in that behalf at its office in Bombay, Calcutta, Delhi Madras or Rangoon, sterling for immediate delivery in London, at a rate not higher than one shilling and six pence and three sixteenth of a penny for a rupee

Provided that no person shall be entitled to demand to sell an amount of sterling less than ten thousand pounds

Provided further that no person shall be entitled to receive payment unless the Bank is satisfied that payment of the sterling in London has been made

Cash reserves of scheduled Banks to be kept with the Bank

42 (1) Every Bank included in the Second Schedule shall maintain with the Bank a balance the amount of which shall not at the close of business on any day be less than five per cent of the demand liabilities and two per cent of the time liabilities of such Bank in India as shown in the return referred to in sub-section (2)

Explanation —For the purposes of this section liabilities shall not include the paid up capital or the reserves, or any credit balance in the profit and

loss account of the Bank or the amount of any loan taken from the Reserve Bank

(2) Every scheduled Bank shall send to the Governor General in Council and to the Bank a return signed by two responsible officers of such Bank showing—

(*a*) the amounts of its demand and time liabilities, respectively, in India,

(*b*) the total amount held in India in currency notes of the Government of India and bank notes,

(*c*) the amounts held in India in rupee coin and subsidiary coin, respectively,

(*d*) the amounts of advances made and of bills discounted in India, respectively, and

(*e*) the balance held at the Bank,

at the close of business on each Friday, or if Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day, and such return shall be sent not later than two working days after the date to which it relates

Provided that where the Bank is satisfied that the furnishing of a weekly return under this sub section is impracticable in the case of any scheduled Bank by reason of the geographical position of the Bank and its branches, the Bank may require such Bank to furnish in lieu of a weekly return, a monthly return to be despatched not later than fourteen days after the end of the month to which it relates giving the details specified in this sub section in respect of such Bank at the close of business for the month

(3) If at the close of business on any day before the day fixed for the next return, the balance held at the Bank by any scheduled Bank is below the minimum prescribed in sub section (1) such scheduled Bank shall be liable to pay to the Bank in respect of each such day penal interest at a rate three per cent above the Bank rate on the amount by which the balance with the Bank falls short of the prescribed minimum and if on the day fixed for the next return such balance is still below the prescribed minimum as disclosed by this return, the rates of penal interests shall be increased to a rate five per cent above the bank rate in respect of that day and each subsequent day on which the balance held at the Bank at the close of business on that day is below the prescribed minimum

(4) Any scheduled Bank failing to comply with the provisions of sub section (2) shall be liable to pay to the Governor General in Council or to the Bank, as the case may be, or to each, a penalty of one hundred rupees for each day during which the failure continues

(5) The penalties imposed by sub sections (3) and (4) shall be payable on demand made by the Bank, and, in the event of a refusal by the defaulting bank to pay on such demand, may be levied by a direction of the principal Civil Court having jurisdiction in the area where an office of the defaulting bank is situated, such direction to be made only upon application made in this behalf to the Court by the Governor General in Council in the case of a failure to make a return under sub section (2) to the Governor General in Council, or by the Bank with the previous sanction of the Governor General in Council in other cases

(6) The Governor General in Council shall, by notification in the *Gazette of India*, direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in British India and which—

(*a*) has a paid up capital and reserves of an aggregate value of not less than five lakhs of rupees, and

(*b*) is a company as defined in clause (2) of section 2 of the Indian Companies Act, 1913,* or a corporation or a company incorporated by or under any law in force in any place outside British India,

and shall by a like notification direct the exclusion from that Schedule of any scheduled bank the aggregate value of whose paid up capital and reserve becomes at any time less than five lakhs of rupees, or which goes into liquidation or otherwise ceases to carry on banking business

Publication of consolidated statement by the Bank

43 The Bank shall compile and shall cause to be published each week a consolidated statement showing the aggregate of the amounts under each clause of sub-section (2) of section 42 exhibited in the returns received from scheduled banks under that section

Power to require returns from co-operative banks

44 The Bank may require any provincial co operative bank with which it has any transactions under section 17 to furnish the return referred to in sub section (2) of section 42, and if it does so, the provisions of sub-sections (4) and (5) of section 42 shall apply so far as may be to such co operative bank as if it were a scheduled bank

Agreement with the Imperial Bank

45. (1) The Bank shall enter into an agreement with the Imperial Bank of India which shall be subject to the approval of the Governor General in Council, and shall be expressed to come into force on the date on which this Chapter comes into force and to remain in force for fifteen years and thereafter until terminated after five years' notice on either side, and shall further contain the provisions set forth in the Third Schedule

Provided that the agreement shall be conditional on the maintenance of a sound financial position by the Imperial Bank and that if, in the opinion of the Central Board, the Imperial Bank has failed either to fulfil the conditions of the agreement or to maintain a sound financial position, the Central Board shall make a recommendation to the Governor General in Council, and the Governor General in Council, after making such further enquiry as he thinks fit, may issue instructions to the Imperial Bank with reference either to the agreement or to any matter which in his opinion involves the security of the Government monies or the assets of the Issue Department in the custody of the Imperial Bank, and in the event of the Imperial Bank disregarding such instructions may declare the agreement to be terminated

(2) The agreement referred to in sub section (1) shall, as soon as may be after it is made, be laid before the Central Legislature

CHAPTER IV

GENERAL PROVISIONS.

Contribution by Governor General in Council to the Reserve Fund

46 The Governor General in Council shall transfer to the Bank rupee securities of the value of five crores of rupees to be allocated by the Bank to the Reserve Fund

Allocation of surplus

47 After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds, and such other contingencies as are usually [illegible] the net annual profits of a [illegible] per cent per annum on the [illegible] ay fix at the time of the issue of shares, a portion of the surplus shall be allocated to the payment of an additional dividend to the shareholders calculated on the scale set forth in the

* Act VII of 1913

Fourth Schedule and the balance of the surplus shall be paid to the Governor-General in Council :

Provided that if at any time the Reserve Fund is less than the share capital, not less than fifty lakhs of rupees of the surplus, or the whole of the surplus if less than that amount shall be allocated to the Reserve Fund

Exemption of Bank from income tax and super tax and provision for deduction at source of income tax on dividends.

48. (1) Notwithstanding anything contained in the Indian Income tax Act, 1922, or any other enactment for the time being in force relating to income tax or super tax, the Bank shall not be liable to pay income tax or super tax on any of its income, profits or gains :

Provided that nothing in this section shall affect the liability of any shareholder in respect of income tax or super tax

(2) For the purposes of section 18 of the Indian Income tax Act, 1922, and of any other relevant provision of that Act relating to the levy and refund of income tax any dividend paid under section 47 of this Act shall be deemed to be "Interest on Securities".

Publication of bank rate

49 The Bank shall make public from time to time the standard rate at which it is prepared to buy or re discount bills of exchange or other commercial paper eligible for purchase under this Act

Auditors

50 (1) Not less than two auditors shall be elected and their remuneration fixed at the annual general meeting The auditors may be shareholders but no Director or other officer of the Bank shall be eligible during his continuance in office Any auditor shall be eligible for re election on quitting office

(2) The first auditors of the [illegible] before the first annual general [illegible] only until that meeting All aud[illegible] be, and continue to act as, auditors until the first annual general meeting after their respective elections .

Provided that any casual vacancy in the office of any auditor elected under this section may be filled by the Central Board.

Appointment of special auditors by Government

51 Without prejudice to anything contained in section 50, the Governor General in Council may at any time appoint the Auditor General or such auditors as he thinks fit to examine and report upon the accounts of the Bank

Powers and duties of auditors

52 (1) Every auditor shall be supplied with a copy of the annual balance sheet, and it shall be his duty to examine the same, together with the accounts and vouchers relating thereto , and every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books accounts and other documents of the Bank, and [illegible]

(2) The auditors shall make a report to the shareholders or to the Governor General in Council as the case may be upon the annual balance-sheet and accounts and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct

view of the state of the Bank's affairs and, in case they have called for any explanation or information from the Central Board, whether it has been given and whether it is satisfactory Any such report made to the shareholders shall be read together with the report of the Central Board, at the annual general meeting

53 (1) The Bank shall prepare and transmit to the Governor General in Council a weekly account of the Issue Department and of the Banking Department in the form set out in the Fifth Schedule or in such other form as the Governor General in Council may by notification in the *Gazette of India*, prescribe. The Governor General in Council shall cause these accounts to be published weekly in the *Gazette of India*

Returns

(2) The Bank shall also within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor General in Council a copy of the annual accounts signed by the Governor, the Deputy Governors and the Chief Accounting Officer of the Bank, and certified by the auditors together with a report by the Central Board on the working of the Bank throughout the year, and the Governor General in Council shall cause such accounts and report to be published in the *Gazette of India*

(3) The Bank shall also within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor General in Council a statement showing the name, address and occupation of and the number of shares held by each shareholder of the Bank

Agricultural Credit Department

54 The Bank shall create a special Agricultural Credit Department the functions of which shall be—

(*a*) to maintain an expert staff to study all questions of agricultural credit and be available for consultation by the Governor General in Council Local Governments, provincial co operative banks and other banking organisations

(*b*) to co ordinate the operations of the Bank in connection with agricultural credit and its relations with provincial co operative banks and any other banks or organisations engaged in the business of agricultural credit

55 (1) The Bank shall at the earliest practicable date and in any case within three years from the date on which this Chapter comes into force, make to the Governor General in Council a report, with proposals if it thinks fit, for legislation, on the following matters, namely —

Reports by the Bank

(*a*) the extension of the provisions of this Act relating to scheduled banks to persons and firms, not being scheduled banks engaged in British India in the business of banking and

(*b*) the improvement of the machinery for dealing with agricultural finance and methods for effecting a closer connection between agricultural enterprise and the operations of the Bank

(2) When the Bank is of opinion that the international monetary position has become sufficiently clear and stable to make it possible to determine what will be suitable as a permanent basis for the Indian monetary system and to frame permanent measures for a monetary standard it shall report its views to the Governor General in Council

56 (1) The Local Board of any area may at any time require any shareholder who is registered on the register for that area to furnish to the Local Board within a specified time, not being less than thirty

Power to require declaration as to ownership of registered shares

days, a declaration, in such form as the Central Board may by regulations prescribe, giving particulars of all shares on the said register of which he is the owner.

(2) If it appears from such declaration that any shareholder is not the owner of any shares which are registered in his name, the Local Board may amend the register accordingly

(3) If any person required to make a declaration under sub section (1) fails to make such declaration within the specified time, the Local Board may make an entry against his name in the register recording such failure and directing that he shall have no right to vote, either under section 9 or section 14, by reason of the shares registered in his name on that register

(4) Whoever makes a false statement in any declaration furnished by him under sub section (1) shall be deemed to have committed the offence of giving false evidence defined in section 191 of the Indian Penal Code * and shall be punishable under the second paragraph of section 193 of that Code

(5) Nothing contained in any declaration furnished under sub section (1) shall operate to affect the Bank with notice of any trust, and no notice of any trust expressed, implied or constructive shall be entered on the register or be receivable by the Bank

(6) Until Local Boards have been constituted under section 9 the powers of a Local Board under this section shall be exercised by the Central Board in respect of any area for which a Local Board has not been constituted

Liquidation of the Bank

57 (1) Nothing in the Indian Companies Act, 1913, shall apply to the Bank, and the Bank shall not be placed in liquidation save by order of the Governor General in Council and in such manner as he may direct

(2) In such event the Reserve Fund and surplus assets, if any, of the Bank shall be divided between the Governor General in Council and the shareholders in the proportion of seventy five per cent and twenty five per cent, respectively

Provided that the total amount payable to any shareholder under this section shall not exceed the paid up value of the shares held by him by more than one per cent for each year after the commencement of this Act subject to a maximum of twenty five per cent

Power of the Central Board to make regulations

58 (1) The Central Board may, with the previous sanction of the Governor General in Council, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act

(2) In particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely :—

(a) the holding and conduct of elections under this Act, including

candidates for election or regarding the validity of elections ,

(d) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which votes may be exercised ;

* XLV of 1860

(*e*) the manner in which notices may be served on behalf of the Bank upon shareholders or other persons,

(*f*) the manner in which the business of the Central Board shall be transacted, and the procedure to be followed at meetings thereof,

(*g*) the conduct of business of Local Boards and the delegation to such Boards of powers and functions,

(*h*) the delegation of powers and functions of the Central Board to the Governor or to Deputy Governors Directors or officers of the Bank,

(*i*) the formation of committees of the Central Board, the delegation of powers and functions of the Central Board to such committees and the conduct of business in such committees

(*j*) the constitution and management of staff and superannuation funds for the officers and servants of the Bank,

(*k*) the manner and form in which contracts binding on the Bank may be executed,

(*l*) the provision of an official seal of the Bank and the manner and effect of its use,

(*m*) the manner and form in which the balance sheet of the Bank shall be drawn up and in which the accounts shall be maintained,

(*n*) the remuneration of Directors of the Bank,

(*o*) the relations of the scheduled banks with the Bank and the returns to be submitted by the scheduled banks to the Bank

(*p*) the regulation of clearing houses for the scheduled banks,

(*q*) the circumstances in which and the conditions and limitations subject to which the value of any lost stolen mutilated or imperfect currency note of the Government of India or bank note may be refunded, and

(*r*) generally, for the efficient conduct of the business of the Bank

(3) Copies of all regulations made under this section shall be available to the public on payment

Amendment of Act III of 1906

59 In the Indian Coinage Act 1906 * for section 11 the following section shall be substituted, namely —

Demonetisation of sovereign and half sovereign

'11 Gold coins coined at His Majesty s Royal Mint in England or at any mint established in pursuance of a proclamation of His Majesty as a branch of His Majesty s Royal Mint shall not be legal tender in British India in payment or on account but such coins shall be received by the Reserve Bank of India at its offices, branches and agencies in India at the bullion value of such coins calculated at the rate of 8 47512 grains troy of fine gold per rupee"

Repeals

60 The Indian Paper Currency Act, 1923 † the Indian Paper Currency (Amendment) Act 1923 ‡ the Indian Paper Currency (Amendment) Act, 1925§ and the Currency Act, 1927,‖ are hereby repealed

Amendment of section 11, Act VII of 1913

61 In sub section (3) of section 11 of the Indian Companies Act 1913 ¶ after the word 'Royal the words Reserve Bank shall be inserted

* III of 1906 † X of 1923 ‡ XXXVI of 1923
§ II of 1925 ‖ IV of 1927 ¶ VII of 1913

THE FIRST SCHEDULE.

[*See section* (*4*)]

AREAS SERVED BY THE VARIOUS SHARE REGISTERS.

I The WESTERN AREA, served by the BOMBAY Register, shall consist of—

the Bombay Presidency including Sind, the Central Provinces, Berar, Hyderabad, Baroda, Khairpur, the Western India States, the Central India States (including Makrai but excluding Rewah and other States of Bundelkhand and Baghelkhand), the Gujerat States, Kolhapur and the Deccan States

II The EASTERN AREA, served by the CALCUTTA Register, shall consist of—

the Bengal Presidency, Bihar and Orissa, Assam, Sikkim, Manipur, Cooch-Behar, Tripura the Eastern States, Rewah and other States of Bundelkhand and Baghelkhand, and the Khasi States

III NORTHERN AREA, served by the DELHI Register, shall consist of—

the United Provinces, Delhi, the Punjab, the North West Frontier Province, Ajmer-Merwara, Baluchistan, Kashmir, the Punjab States excluding Khairpur, the Simla Hill States, Dujana, Pataudi, Kalsia, Rampur, Tehri Garhwal, Benares, the Rajputana States including Palanpur and Danta, Gwalior, Khaniadhana, Kalat, Las Bela, Hunza, Nagir, Amb, Chitral, Dir, Phulera and Swat

IV. The SOUTHERN AREA, served by the MADRAS Register, shall consist of—

the Madras Presidency, Coorg, Mysore and the Madras States

V The BURMA AREA, served by the RANGOON Register, shall consist of—

Burma, the Andaman and Nicobar Islands, Bawlake, Kantarawadi, and Kyebogyi

THE SECOND SCHEDULE.

[*See section 42 and section 2* (*e*)]

[SCHEDULED BANKS]

Ajodhia Bank, Fyzabad
Allahabad Bank.
American Express Company Incorporated
Banco National Ultramarino
Bangalore Bank
Bank of Baroda
Bank of Behar
Bank of Chettinad, Madras
Bank of Hindustan, Madras
Bank of India, Bombay
Bank of Mysore
Bank of Taiwan
Bank of Upper Burma
Benares Bank
Bengal Central Bank
Bhagwan Das & Co , Dehra Dun
Canara Bank
Central Bank of India
Chartered Bank of India, Australia and China
Comptoir National d'Escompte de Paris
Eastern Bank.
Grindlay and Company
Hongkong and Shanghai Banking Corporation
Imperial Bank of India
Imperial Bank of Persia
Indian Bank, Madras
Industrial Bank of Western India, Ahmedabad
Jalpaiguri Banking and Trading Corporation
Karnani Industrial Bank
Lloyds Bank
Mercantile Bank of India
Mitsui Bank, Bombay
Muffassil Bank, Gorakhpur
National Bank of India
National City Bank of New York
Nederlandsche Indische Handels Bank
Nederlandsche Handel Maatschappij.
Nedungadi Bank, Calicut
Oudh Commercial Bank
Peoples Bank of Northern India.
P and O Banking Corporation
Punjab and Sind Bank, Amritsar
Punjab Co-operative Bank, Amritsar.
Punjab National Bank, Lahore.
Simla Banking and Industrial Company
[illegible]

THE THIRD SCHEDULE

(*See section 45*)

PROVISIONS TO BE CONTAINED IN THE AGREEMENT BETWEEN THE RESERVE BANK OF INDIA AND THE IMPERIAL BANK OF INDIA

1 The Imperial Bank of India shall be the sole agent of the Reserve Bank of India at all places in British India where there is a branch of the Imperial Bank of India which was in existence at the commencement of the Reserve Bank of India Act, 1934 and there is no branch of the Banking Department of the Reserve Bank of India

2 In consideration of the performance at the places referred to in clause (I) by the Imperial Bank of India on behalf of the Reserve Bank of India of the functions which the Imperial Bank of India was performing on behalf of the Governor General in Council before the coming into force of the Reserve Bank of India Act, 1934, the Reserve Bank of India shall pay to the Imperial Bank of India as remuneration a sum which shall be for the first ten years during which this agreement is in force a commission calculated at one-sixteenth of one per cent on the first 250 crores and
of the total of the receipts and
overnment by the Imperial Bank
t the close of the said ten years
India to the Imperial Bank of
revised and the remuneration
e basis of the actual cost to the
ounting investigation of per-
etermined shall thereafter be
h period of five years so long
e arises between the Reserve
the amount of the said remu-
ision to the Governor General
nk such information and may
order such accounting investigation as he thinks fit

the Imperial Bank of India of branches
commencement of the Reserve Bank of
hall, until the expiry of fifteen years
t, make to the Imperial Bank of India

(*a*) during the first five years of this agreement—nine lakhs of rupees per annum,

(*b*) during the next five years of the agreement—six lakhs of rupees per annum; and

(3) during the next five years of the agreement—four lakhs of rupees per annum.

4 The Imperial Bank of India shall not without the approval of the Reserve Bank of India open any branch in substitution for a branch existing at the time this agreement comes into force

THE FOURTH SCHEDULE

(*See section 47*)

SCALE OF ADDITIONAL DIVIDEND PAYABLE TO SHAREHOLDERS

A If the maximum rate of dividend fixed under section 47 is five per centum and so long as the share capital of the Bank is five crores of rupees—

(1) if the surplus does not exceed four crores of rupees—*Nil*

(2) if the surplus exceeds four crores of rupees—

(*a*) out of such excess up to the first one and a half crores of rupees—a fraction equal to one sixtieth,

(*b*) out of each successive additional excess up to one and a half crores of rupees—one half of the fraction payable out of the next previous one and a half crores of excess.

Provided that the additional dividend shall be a multiple of one-eighth of one per cent on the share capital, the amount of the surplus allocated thereto being rounded up or down to the nearest one-eighth of one per cent. on the share capital.

B If the maximum rate of dividend fixed under section 47 is below five percentum the said fraction of one-sixtieth shall be increased in the ratio of the difference between six and the fixed rate to unity.

C. When the original share capital of the Bank has been increased or reduced, the said fraction of one-sixtieth shall be increased or diminished in proportion to the increase or reduction of the share capital

THE FIFTH SCHEDULE.

(*See section 53*)

RESERVE BANK OF INDIA

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ending on the day of 19

ISSUE DEPARTMENT.

Liabilities.	Rs.	*Assets*	Rs
Bank Notes held in the Banking Department		A. Gold coin and bullion—	
Bank Notes in circulation	...	(*a*) held in India ...	...
Total Bank Notes issued	..	(*b*) held outside India	...
Government of India Notes in circulation		Sterling Securities	...
		Total of A	...
		B. Rupee coin ...	...
		Government of India rupee securities ...	..
		Internal bills of exchange and other commercial paper ..	...
Total Liabilities	...	Total Assets	...

Ratio of total of A to liabilities per cent.

Dated the day of 19 .

BANKING DEPARTMENT.

Liabilities.		Rs	*Assets.*		Rs.
Capital paid up	...	...	Notes ...	..	...
Reserve Fund	...	...	Rupee coin	...	...
Deposits—			Subsidiary coin	...	...
(*a*) Government	...	..	Bills discounted—		
(*b*) Banks	..	...	(*a*) Internal	...	...
(*c*) Others	...	..	(*b*) External	...	...
Bills payable	...	..	(*c*) Government of India		

Liabilities			Rs	*Assets*	
Other liabilities	...	...		Treasury Bills	...
				Balances held abroad	...
				Loans and advances to the Government ...	..
				Other loans and advances	...
				Investments ..	...
				Other assets ...	...

Dated the day of 19

L. GRAHAM
Secy to the Govt of India

THE BENGAL LAND REVENUE SALES ACT, 1859 *

ACT NO XI OF 1859 †

RECEIVED THE G-G'S ASSENT ON THE 4TH MAY, 1859

An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.

Preamble

WHEREAS it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sale of estates for arrears of revenue, or other demands of Government, in the Province of Katak; and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured, and whereas it is expedient to afford sharers in estates, who duly pay their shares of the sadr jama of their estates, easy means of protecting their shares from sale by reason of the default of their co sharers · and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents . and whereas it is expedient to provide for the voluntary registration of dependant taluks existing at the time of settlement . and whereas it is expedient to protect the holders of registered under tenures created since the settlement and not resumable by the grantors or their representatives, from loss by the

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[illegible]

ga, and Manbhu [illegible]

sam Land and Reve [illegible]

sdiction," (of a Collector) "Collector" and "demand" occurring in the Act, are defined in Bengal Act VII of 1868, s 1

Bengal Acts III of 1862 and VII of 1868 are to be read with and taken as part of this Act —*See* s 30 of the former Act

The Public Demands Recovery Act (Ben Act III of 1913), so far as is consistent with the tenure thereof is to be construed as one with this Act —*See* Ben. Act I of 1895.

avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public revenue when the arrears can be realized by such sale and to give absolute security to such tenures by special registry, when shown to be held at rents sufficient for the security of the revenue and it is, therefore, proper for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, Bihar and Orissa, It is enacted as follows.—

Object of the Act—The object of this Act is to give the purchaser a title which cannot be challenged 8 W R 439, 10 W R (F B) 66 The Act is a stringent enactment for the realization of arrears of revenue and therefore there is an obligation to comply exactly with its requirements 43 C L J 468=95 Ind Cas 333=30 C W N 168

Act XI of 1859 and Ben Acts VII of 1868 and VII of 1880—Construction—Act XI of 1859 and Ben Acts VII of 1868 and VII of 1880, are under s 2 of the last mentioned Act, to be construed as if they are all a single Act as far as construction is consistent with the Act VII of 1880 14 I C

1 [*Laws repealed*]—*Repealed by Act XIV of* 1870, *s* 1.

Arrear of revenue defined

2 If the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kistbandi* of any mahal have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue

Kist—This section refers to the *kists* or instalments by which the settlement and *kistbandi* of a mahal have been regulated and not the *kist* or instalment noted in the Collectorate Touzi department 7 Ind Cas 130

Unpaid—Payment to Post Office is not equivalent to payment to the Collector 4 C W N 130

Arrear—Revenue payable in January *kist* becomes an arrear on the 1st February next following and not earlier 41 Ind Cas 458, see also 7 Pat L T 747=96 Ind Cas 807 When an amount was tendered as the January *kist* and the estate was then put up for sale on account of arrears due in respect of an earlier *kist*, *held* that the Collector acted within his rights in bringing the estate to sale for arrears of the January *kist* 10 C W N 948, but see 12 C W N 646

Revenue—*Malikana* comes under the definition of land revenue given in s 2 The revenue authorities are entitled to calculate the *malikana* and land revenue together 8 C W N 649=31 C 256 P C=31 I A 52

Latest day of payment

3 Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which by the Regulations and Acts in force, [illegible]

[illegible] ice of the dates so fixed in the official [illegible] ng publication to be made, as far as regards each district in the language of that district, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Munsifs, and at every thana station of that District, and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is or dates are, to take effect

Notes—This Act does not sanction and by plain implication forbids the sale of any estate which is not, at the time in arrear of Government revenue 25 C 833 (P C)=25 I A 151=2 C W N 513 When an arrear of revenue has not been paid within the latest date fixed for payment, no payment or tender of,

made after sunset of such date can bar or interfere with the sale either at the time of the sale or after its conclusion 2 C L J 325, See also 13 C L R 1 (F B) The latest day for the payment of Government revenue in the case of any new estate formed after partition of a parent estate must be fixed in accordance with the provision contained in Rule No 1 of the Board's Rule issued under the powers conferred by this section and any Revenue Circular issued by the Board or any Rule framed by the same in any way affecting Rule No 1 must be advertised and notified as required by this section before such a circular or a sale may have the force of law and when not so published it is *ultra vires* Any sale held for arrears of revenue which could not have been due if the *kist* were fixed under Rule one of the Board Rules is invalid and illegal and therefore liable to be set aside 8 C W N 26—*Kist* fixed by the Board of Revenue Default of payment of one *kist*, proprietor of estate, if entitled to pay the whole demand on the date fixed for the last *kist* *Held* that the plaintiff was not entitled to pay the whole demand of one year on the 28th March and the Revenue authorities have every right to sell the estate 7 C W N 370 Where the original *kistbandi* under s 2 of the Act is unknown and forgotten, latest dates fixed under this section are popularly known as the *kist* dates They are not *kistbandi* dates as provided for by s 2, but the latest dates of payments as fixed by the Board of Revenue under this section 7 Pat L T 747=96 Ind Cas 807=A I R 1926 p 549 On failure to pay the Government assessment, his estate or interest in the land is forfeited or rather determined By a sale held under this Act what is sold is not the interest of the defaulting owner, but the interest of the Crown subject to the payment of the Government assessment 18 C W N 81, see also 54 I A 718=54 C 669=31 C W N 965

4 *[*In Sylhet, personal property of the defaulters may in first instance be distrained and sold*]—*Repealed by Act XII of 1891 Sch I*

5 Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below otherwise than after a notification in the language of the district, specifying the nature and amount of the arrear or demand and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of this Act, in the office of the Collector or other officer duly authorized to hold sales under this Act in the Court of the Judge within whose jurisdiction the land advertised lies and in the Munsif's Court and police thana of the division in which the estate or share of an estate to which the notification relates is situated, or if the estate or share of an estate be situated within the jurisdiction of more than one Munsif's Court or police thana, in some one or more of such Courts or thanas, and also at the kachari of the malguzar or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose

Proviso in the case of certain description of arrears

First—Arrears other than those of the current year, or of the year immediately preceding

Secondly—Arrears due on account of estates other than that to be sold

Thirdly—Arrears of estates under attachment by order of any judicial authority or managed by the Collector in accordance with such order

Fourthly—Arrears due on account of takavi, pulbandi or other demands not being land revenue, but recoverable by the same process as arrears of land revenue

Estate—The word 'estate' in the description attached to this section means not only a whole estate, but applies also to such shares as are referred to in the first portion of the section 13 W R 423

Arrears—Sale without arrears is absolutely void 13 W R 381=5 B L R 135

* The section has been repealed in Sylhet by Reg I of 1896, s. 2

Notification—The object of a notification under this section when the estate is under attachment, is to protect the interest of the attaching creditor 1 C L J 565 Omission to issue the same is not cured by the issue of certificate under s 28 *Ibid* The non issu ... nature contemplated in s ... Commissioner cannot be ... R 157) and notification ... 9 W R 481

Current year—The expression "current year" in this section is to be understood as referring to the year in which the latest date for payment fails as fixed under s 3 and not the year in which the sale of the property ultimately takes place. 7 C W N 377 The ... (1st April to 31st Mar ... L J 425=34 C 331 ... arrears for which the ... a notice under this section, arrears which accrued due subsequently to the issue of such notice 8 C W N 649 see also 11 C W N 1107

Arrears of estates under attachment—In order to come under the protection of the clause (3) it is not necessary that an estate under attachment by order of a judicial authority must also be managed by some Revenue authority, as all estates under attachment whether managed by Collector or not are entitled to the benefit of the special notice described in this section 13 W R 423 Where an estate or a share of an estate not *severed for the purpose of revenue*, is under attachment by order of a Civil Court in execution of decree, such estate or share cannot under this section be put up to sale without notification required by this section 12 B L R 297=1 I A 89 (P C) The words "arrears of estates under attachment" in the above section are not confined to estates the whole of which is under attachment *Ibid* But there is nothing in this section which indicates that property sold for arrears of Government revenue should be under attachment at the time of sale A sale in contravention of s ... issued by the Collector unde ... contemplated by s 5 20 C ... property at the time when ... under s 5 did not vitiate t ... 325 This section provides for cases in which the attachment has been made at least 15 days before the last date of payment for which it is sought to bring the estate to sale 22 C 738 A purchaser of a share of an estate at a revenue sale during the pendency of execution proceeding on a mortgage decree, that is, after the mortgage sale and before its confirmation, is affected by the doctrine of *lis pendens* 10 C L J 590=4 Ind Cas 731

Land revenue—The embankment charges ordered to be levied under the Certificate Act are taken out of the purview of this Act, unless and until fresh notices are issued under s 5 and they cannot be treated as land revenue 42 C 709=19 C W N 507 (P C)

Issue of notifications of sale

6 The Collector or other officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in section 3 of this Act, ... affixed in his own office ... the estates or shares of ... which the sale of the same will commence, which day shall not be less than "thirty*" clear days from the date of affixing the notification in the office of the Collector or other officer as aforesaid

And if the Government revenue of any estate or share of an estate to be sold exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate shall be published in the official Gazette

Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following be put up to

* The word "thirty" in s 6 has been substituted by Ben Act VII of 1868 (s 3) and certain words repealed by the same enactments have been omitted

public auction by, and in the presence of, the Collector or other officer as aforesaid, and shall be sold to the highest bidder

Tender after latest day of payment not to stop sale

And no payment or tender of payment, made after sunset of the said latest day of payment shall bar or interfere with the sale, either at the time of sale or after its conclusion

Collector and other officer, etc—Sale proceeds under this Act do not become void by reason of
by a Sub-deputy Collector in
sales under the Act 22 (
This section does not require
perty is put up for sale 6 Pat L T 738=88 Ind Cas 485=3 Pat L R 237

Notifications in the language of the District—Failure to notify in the vernacular Government Gazette, the sale of an estate the Government revenue of which exceeds Rs 500 is not an illegality which *per se* vitiates the sale as having been made contrary to the provisions of Act XI of 1859 It is a sufficient compliance with paragraph 2 of this section if the sale is notified in the official Gazette published in Calcutta 16 A L J 915=35 M L J 644 (P C)=47 Ind Cas 995
Notice unde
the people
ment not b
the mahal
issued after
fixed A combined notification therefore under ss 5 and 6 can not be legally issued The effect of the issue of such notice must be that there was no service of a proper notification issued under s 6 of the Act 43 C L J 468=95 Ind Cas 353=30 C W N 618

Specifying estates or shares of estates—Under this section it is not necessary that a notification should specify the owners of an estate or the owners of the shares in the estate All that is necessary under that section is that the notification should speci
an estate
composed
also applies
been opene
could not
8 C W N
the law to
advertising that the residue of an es
particulars and stating what that residu
description The estate or share to be
32 C 542=9 C W N 487, 9 C W
The object of the law as well as the

Thirty clear days—Where the notification had not been affixed thirty days before that day fixed by it for holding the sale the requirements of this section had not been fulfilled 11 C L R 466=92 C 271 But it does not make the sale a nullity The sale in such a case is sale under the provisions of the Act and the restrictions imposed by it on the right of the defaulter to have the sale set aside apply 16 C W N 227=13 Ind Cas 493 Section 8 of the Public Demands Recovery Act has no application in a case where the notices under this section had been affixed less than 30 days before the sale 2 Ind Cas 380, 7 C W N 377, 30 C 1=6 C W N 688, 11 C 200 (F B)

Non service of notice—The non compliance with the provisions of this section is not a mere irregularity and is not one of those errors in procedure which are inten-

ded to be cured by Act VII of 1868 11 C 200, 17 C 398 see also 20 C 325, 21 C 70

Sales of tenures—Act VII of 1868 (Bengal) makes the sunset law as enacted in this section, applicable to sale of tenures under the former Act 21 C 360, see 21 C 844

Official Gazette—The publication of a notification in the *Calcutta Gazette* only is a sufficient compliance with the provisions of law requiring the publication of such notification in the official Gazette 17 C W N 1135

Power of Collector—The Collector has not an innate power to sell, his power to sell is that which is vested in him by legislature, and he is entitled to sell a revenue unit in its entirety whether it be an estate or a share and nothing less He is not entitled to dismember that revenue unit for the purposes of realisation of arrear 16 C L J 524

Certificate of sale—As to whether conclusive evidence of service *Vide* 6 C W N 688

nt of the although were not fore could

Highest bidder—Must be sold to the highest bidder 8 W R 372 A former proprietor or co sharer can be a purchaser 11 W R 265

Notice to raiyats &c

7 Whenever an estate or share of an estate is notified for sale as provided by section 6 of this Act the Collector or other officer as aforesaid shall affix a proclamation in the language of the district in his own office, and as soon thereafter as may be in the Munsif s Courts and police thanas within which the estate or share of an estate, or any part of it is situated and also at the kachari of the malguzar of the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, forbidding the raiyats and under tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid

Object—The object of notification under this section is to give notice to the *ryots* not to pay rent to defaulting zemindars, so non service of such notifications could not be a ground of invalidating the title of the auction purchaser 13 C L R 1 The notice is required because the title of the auction purchaser relates back to the date of the default, the omiss nected with any substantial injury 21 C 360 (F B) But the mere fact in accordance with the provisions c inference of substantial injury to th 6 C W N 688 In the absence of proof that a person had sustained substantial section such omission Collector to mention of Government reve

Claims of defaulter against Government not to invalidate sale

8 No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against Government shall bar or render void or voidable a sale under this Act, nor shall the plea that money belonging to the defaulter and sufficient to pay the arrear of revenue due was in the Collector s hands bar or render void or voidable a sale under this Act, unless such money stand in the defaulter s name alone and without dispute, and unless, after application in due time made by the defaulter or after the written agreement provided for in section 15 of this Act, the Collector shall

have neglected, or refused on insufficient grounds, to transfer it in payment of the arrear of revenue

Notes—*Vide* 2 C W N 360, 2 C W N 513 (P C), 25 C 833, 42 Ind Cas 500

Deposits receivable from persons not proprietors

9 The Collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment determined according *to section 3 of this Act,* receive as a deposit from any person, not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate

And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share or part thereof, *subject to the rules in force for taking security in the cases* of parties in civil suits

And if the person so depositing whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale or which he believed in good faith, would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit with or without interest as the Court may determine, from the defaulting proprietor

And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof the amount so credited shall be added to the amount to the original lien

Deposit by a person who is not a proprietor—This section does not allow of deposits on account of Government revenue by a defaulting proprietor himself 12 W R 249 *Where the mortgagee is a part proprietor of an estate* this section does not entitle him to claim a lien on the mortgaged property for sums paid by him on account of Government revenue But according to the general
onscience he is entitled to the benefit of any
see also 8 W R (P C) 17, 14 C 809 (F
The Court can direct recovery of money under this section 25 W R 385, 11 W R
377, 12 C 213

Defaulting Proprietor—The expression "defaulting proprietor in this section means where there is more than one proprietor, the entire body of such proprietors 16 C L J 148

Separation of shares held in common by opening of a separate account

10 When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application* to that effect

The application must contain a specification of the share held in the estate by the applicant

The Collector shall then cause to be published in his own office, in the Court of the Judge, Magistrate (or Joint Magistrate, as the case may be)
[illegible] whose jurisdiction the estate or any
conspicuous part of the estate itself,

* As to fees chargeable on applications under s 10, *see* Ben Act III of 1862 s 3

If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account* with the applicant and shall credit separately to his share all payments made by him on account of it The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence

Scope—There is nothing in s 10 which enacts that if the share of the applicant shall not be such as he states it to be, the co sharers shall not be able to bring a suit in the Civil Court to establish the extent of their shares in the event of the Collector under the Butwara Law, rejecting their application for a [illegible] 6 W R [illegible] For definition of share, *vide* 1 W R [illegible] out of the six which consti[illegible] The Collector when he opens [illegible]ns a statutory duty, and his [illegible]sions on the subject If the [illegible]

confer upon the person who obtains a separate account opened under such circumstances the statutory privileges created by s 53 of the Act 14 C L J 552, see also 17 C 148 When an application for opening a separate account is made in the relation between the total jama sadar and jama sadar assigned in the application to the sha[illegible] [illegible]nade is the determining factor as to whether [illegible] Collector in opening the separate account [illegible] this proportion 4 Pat 1=81 Ind Cas 66 [illegible] properties to be sold in the sale notice is to enable the purchasers to know exactly what is going to be sold 39 C W N 1004

Separation of shares consisting of specific portions of land by the opening of a separate account

11 When a recorded sharer of a joint estate, whose share consist of a specific portion of the land of the estate desires to pay his share of the Government revenue separately he may submit to the Collector a written application† to that effect The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof together with a statement of the amount of sadar jama heretofore paid on account of it

On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceeding section

In the event of no objection being urged by any recorded co sharer within six weeks from the time of publication the Collector shall open a separate account‡ with the applicant and shall credit separately to his share all payments made by him on account of it

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that, from which the separate liabilities of the share of the applicant commence

Jurisdiction of Civil Court—Where the Collector has allowed separate account to open the Civil Court has jurisdiction to try the suit 6 B L R 614=15 W R 112, but see 9 W R 533 The provision of this section must be strictly obeyed by the Collector 14 C L J 552

Effect of sale—*Vide* 20 W R 264, 22 W R 45 18 W R 451 12 W R 243, 17 C 148, 6 C L J 163 14 C W N 6 6=5 Ind Cas 650

If objection be made parties to be referred to the Civil Court.

12. If any recorded proprietor of the estate whether the same be held in common tenancy or otherwise object that the applicant has no right to the share claimed by him or that his interest in the estate is less or

* As to opening a separate account under s 10 see Ben Act VII of 1876 s 66

† As to fees chargeable on application under s 11, see Ben Act VII of 1876 s 63

‡ As to opening a separate account under s 11 see Ben. Act VII of 1876, s 70

other than that claimed by him or if the application be in respect of a specific portion of the land of an estate, that the amount of sardr jama stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognized by the other sharers as the jama thereof, the Collector shall refer the parties to the Civil Court, shall suspend proceedings until the question at issue is judicially determined

Reference to Civil Court—Where an application is made to a Collector by a registered proprietor for separate account, and the application is objected to within ... at an objection is regularly ... it should refer the parties to ... 6 ... are the only objections that could be made to the only statements that the application is to contain It would seem to follow from this that if no such objection is made the Collector is bound to *open a separate account whether the share from which the separate account is to be* opened is in arrears or not at the time 4 Pat 1=3 Pat L R 66=88 Ind Cas 465

13 Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which according to the separate accounts an arrear of revenue may be due

Sale of separate shares

In all such cases ... excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions, of Jama assigned thereto

Order a separate account—This section requires a sale to be confined to the share for which an arrear of revenue is due when a separate account has been ordered by Collector, not merely applied for 7 W R 154

What the auction purchaser acquires—The auction purchaser of a share ...

So the purchaser is entitled ... proprietor has acquired a title by twelve years adverse possession previously to the sale 13 C W N 407=1 Ind Cas 81, 19 C W N 782=29 Ind Cas 350 So also a purchaser of a share of an estate of a Hindu widow, at a sale for arrears of revenue under this section does not acquire merely the right, title and interests of the widow but he takes the share itself which is exposed for sale 22 C 641

Estate—The term "estate" as used in the clause if the estate shall become liable to sale in this section means the entire estate out of which the separate share has been severed 18 C L J 505 A co-sharer is not under any legal obligation to his co-sharers to pay his share of the Government revenue 18 C L J 97 The sale law contemplates that an estate in arrears should be sold as soon as possible after the liability to sale has arisen by failure to pay the arrears on the last day of payment Therefore where after opening of separate accounts the balance of the residuary share is sold for arrears of revenue the onus of showing that the entire estate (*i e*, including the separated accounts) was liable to sale at the date of the opening of the separate accounts is on the party alleging the same 4 Pat 1=88 Ind Cas 465=A I R 1925 Pat 681

... under ... ertain ... wever, ... of the ... rstood that there is a separate account in respect of such a share and that other share or

shares will be exempted from sale" and in this notice there was such an entry in the columns mentioned *Held* that the provision of this section has been complied with 8 C W N 757, See also 8 C W N 337

14 If any case of a sale held according to the provisions of the last preceding section the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale the Collector or other officer as aforesaid shall stop the sale, declare that the entire estate will be put up to sale for arrears of revenue at a future date unless the other recorded sharer or sharers or one or more of them shall, within ten days purchase the share in arrear by paying to Government the whole arrears due from such share

Entire estate may be sold under certain conditions

If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in sections 28 and 29 of this Act to the purchaser or purchasers who shall have the same rights as if the share had been purchased by him or them at the sale

If no such purchase be made within ten days as aforesaid the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 6 of this Act

Ten days —The period prescribed in this section runs from the time when the notice of the order of the Collector is given to other shares and not from the date of sale 21 C 844

Notification —The Collector sharers, under this section, of the they did not pay up the arrears due under this Act is that the declarat 5 C L J 525=34 C 381

Invalid Sale.—*Vide* 19 C W N 764 P C, 31 Ind Cas 743

Certificate to purchaser —Payment by different co sharers entitles them equality 4 C W N 465

15 *If any recorded proprietor or co partner of an estate shall deposit with the Collector money or Government securities endorsed and made payable to the order of the Collector and shall sign an agreement pledging the same to Government by way of security for the jama of the entire estate and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under section 3 of this Act the Collector shall apply to the payment of such arrear the said money or securities or such part thereof, or of any interest due on the said securities as may be necessary, and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities and may then sell and transfer the securities for any balance that may remain

Deposit for protection of estate from sale

And, so long as any money or securities as aforesaid sufficient to cover any arrear that may fall due shall remain and be available as aforesaid the estate, for the protection of which the said deposit was made, shall be exempted from sale for arrears of revenue

All moneys and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court

Notes —*Vide* 8 C W N 649, 12 C W N 646=8 C L J 41=35 C 636.

* As to fees chargeable on application under ss 15 and 16—See Ben. Act III of 1862, s 3

16 * It shall be competent to the person making a deposit under the provision of the last preceding section or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same

Withdrawal of the deposit

17 No estate [shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards, and no estate the sole property of a minor or minors and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards but of which the Court of [illegible] 1822, shall be [illegible] succession to t[illegible] attained the full age of eighteen years]†

Estates under Court of Wards or under attachment

And no estate held under attachment by the Revenue authorities otherwise than by order of judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment

And no estate held under attachment or managed by a Revenue officer in pursuance of an order of a judicial authority shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued

Estate under attachment—A sale for arrears of revenue if for arrears which have accrued while the land has been subject to an order issued by the Collector under the Bengal Cess Act, for the levy of road cess in arrear is contrary to this section such an order being an attachment within the meaning of that section 21 C 70 P C = 20 I A 165 There is nothing in s 5 which indicates that property sold for arrears of Government revenue should be under attachment at the time of sale A sale in contravention of ss 5 and 17 is *ultra vires* and therefore void 13 M 89

18 It shall be competent to the Collector or other officers aforesaid at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced to exempt such estate or share from sale by a special order to the Collector or other officer as aforesaid to that effect in each case, and no such sale shall be legal if held after th receipt of such order of exemption

Power to exempt from sale

Provided, however,‡ that the Collector or other officer as aforesaid or the Commissioner shall duly record in a proceeding the reason for granting such exemption, and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption

Proviso

Nature of order—An order under this section should be an absolute exemption and not an order which may have effect as an exemption or not according to what may happen or be done afterwards The reason for the exemption must be recorded at the time 7 Ind Cas 130, 17 C 809 = 17 I A 57, 13 C L R I The Civil Court has no jurisdiction to examine the reasons of such an order 10 C W N 137

19 Sales shall ordinarily be made by the Collector or other officer as aforesaid in the land revenue office at the sadar station of the district

Sales where to be made

* As to fees chargeable on application under ss 15 and 16—see Ben Act III of 1862, s 9
† Part of s 17, repealed by Ben Act III of 1881, has been omitted.
‡ Certain words here have been omitted by Act I of 1903

Provided, however, that it shall be compe ent to the "Commissioner"* to prescribe a place for holding sales other than such office whenever "he' † shall consider it beneficial to the parties concerned

20 In case the Collector or other officer as aforesaid shall be unable, from sickness, from the occurrence of a holiday, or from any other cause to commence the sale on the day of sale fixed as aforesaid, or if having commenced it if he be unable, from any cause to complete it, he shall be competent to adjourn it to the next day following not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by written proclamation stuck up in his katchari, and so on, from day to day, until he shall be able to commence upon or to complete the sale , but with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid

Adjournment of sales

When adjournment allowed —The only causes for altering the day of sale under this section are sickness, the occurrence of a holiday or any similar causes Where a notification has not been issued by the Collector in proper time the Collector has not power to alter the date under this section 9 C 271=11 C L R 466

21. On the day of sale fixed according to section 6 of this Act sales shall proceed in regular order , the estate to be sold bearing the lowest number on the tauji or register in use in the Collector's office of the district being put up first and so on in regular sequence, and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in section 22 of this Act

Order of selling

22 The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary either in cash, Bank of Bengal‡ ' post bills, currency notes"§ or Government securities, to be valued at the market rate of the day, duly endorsed twenty five per cent on the amount of his bid , and in default of such deposit the estate or share shall forthwith be put up again and sold

Deposit on account of purchase money

Purchaser —The expression "purchasor" in s 37 does not mean the certified purchaser only, that is, the term is not confined to the person who has been declared the purchaser of the estate under this section 7 Ind Cas 849

23 The full amount of purchase money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate brought by him took place, reckoning that day as some of the thirty , or if the thirtieth day be a sunday or other close holiday, then on the first office day after the thirtieth , and in default of payment within the prescribed period aforesaid, the deposit shall be forfeited to Government, the estate or share shall be resold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold

Full payment of purchase money

And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, difference shall be leviable from him by any process authorized for realizing

* Certain words have been omitted by Act I of 1903

† The word within quotations has been substituted by Act IV of 1914

‡ Here the words "notes or" have been repealed by the Repealing and Amending Act (I of 1903)

§ The words within quotions have been inserted by Act I of 1903

an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase money and shall be dealt with in the manner hereinafter prescribed for the disposal thereof

24 When default is made in the payment of purchase money a notification of the intended re sale shall be published for the period and in the manner prescribed in section 6 of this Act but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred and if the payment or tender of payment of the arrear on account of which the estate or share was first sold and of any arrear which may have subsequently become due shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re sale shall be stayed The rules contained in the last preceding section shall be applicable to every such re sale

Re sale

Provided that if default of payment of purchase money shall occur more than once the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized

25 * It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act or the said Act of 1859* so that such appeal be preferred to such Commissioner on or before the sixtieth day from the date of sale reckoning as in s 23 of the said Act XI of 1859 or be presented to the Collector or other officer duly authorized to hold sales under the said Act for transmissi n to the Commissioner on or before the forty fifth day from the day of sale reckoning as af resaid and not otherwise And the Commissioner shall be competent in every case of appeal so preferred to annul any sale of the estate or share of an estate made under this Act or Act XI of 1859,† which shall appear to him not to have been conducted acc rding to the provisions of the said Acts awarding at the same time to the purchaser a payment from the proprietor of compensation for his loss if the sale shall have bee i occas ioned by the neglect of the proprietor, such com ensation not to exceed the inter st, at the highest rate of the current Governm nt Securities on the amount of deposit of balance of purchase money during th period f its being retained in the Collectors office and the order of the Commissioner shall in such cases be final

Appeal against sales

Sixtieth day—The appeal contemplated by this section must be preferred to *the Commissioner not later than the sunset of the s xtieth day from the day of sale*

by s 2 of Act VII (B C) of 1868 must be interpreted as meaning at least not open to review' 11 C W N 803=6 C L J 84 see also 22 C 416

* Th s section has been repealed and replaced by s 2 of Act VII (B C) of 1868—*Vide Per Lord Macnaghten* in 21 C 70 P C at page 81 But strictly speak ng this sect on has been repealed by Ben Act VII of 1868

† Here certa n words have been omitted by Ben Act VII of 1880

property was advertised for sale and a different property sold An appeal to the Commissioner under this section is not the sole remedy open to the party whose property has been sold 26 C 73 (F B)=5 C W N 251; (14 C 1, 23 C 641 overruled, this case has been followed in 28 C 813=6 C W N 331, 33 C 451=3 C L J 230=10 C W N 347, approved in 5 C L J 555 and referred in 30 C 418, 32 C 1130=1 C L J 542 But in every case where a sale for arrears of revenue is impeached as being contrary to the provisions of Act XI of 1859 no grounds of objection are open to the plaintiff which have not been declared and specified in an appeal to the Commissioner under this section 21 C 70=20 I A 165, 32 C 111=8 C W N 767 A suit by a purchase of an estate sold for arrears of Government revenue to recover compensation awarded to him under this section by a Commissioner who set aside the sale can be maintained in a Civil Court 1 C W N 447

Power of Commissioner—Under this section the Commissioner has jurisdiction to annul a sale which may appear to him not to have been conducted according to the provisions of the Act 52 Ind Cas 990 The whole clauses of this Act, in so far as these relate to sale or to
well as the provisions of s 2 of the
press footing that they are to be
arrears 25 C 832 P C=25 I A 151=2 C W N 513 The contention that the Commissioner can only act under this section when there has been a mistake in procedure and that in all other cases he must act under s 26 is not sound The power given to the Commissioner under this section goes beyond proper procedure 5 Pat L J 16

26 It shall be competent to the Commissioner of Revenue on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale and to represent the case to the Board of Revenue, who* may annul the sale, and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper

Annulment of sale in special cases

Annulment of sale in
the purchaser a title which
larity under s 25 or under s
10 W R (F B) 16 In a su
is a matter which cannot govern the decision of the Court as the Revenue authorities alone, have the power to set aside a sale on the ground of hardship under this section 7 Ind Cas 130 The fact that two out of the eight co sharers were minors or the estate has not previously defaulted is not sufficient in itself to justify the setting aside of a perfectly regular and *bona fide* sale 3 Pat L R 207

27 All sales of which the purchase money has been paid up as prescribed in s 23 of this Act, and against which no appeal shall have been preferred shall be final and conclusive at noon of the sixtieth † day from the day of sale, reckoning the said day of sale as the first of the said sixty † days

Sales when final

And sales against which an appeal may have been preferred and dismissed
final and conclusive from the date of such dis
m the day of sale, or, if less, then at noon of

Title of the purchaser—Under this section the title automatically vests in the purchaser at the revenue sale by reason of the sale and payment of the purchase money It becomes complete as soon as the sale becomes final and conclusive

* Here certain words have been omitted by Act IV of 1974

† The words "sixtieth" and "sixty" in s 27 have been substituted for the words "thirtieth" and "thirty" respectively by Ben Act VII of 1868, s 4

property was advertised for sale and a different property sold An appeal to the Commissioner under this section is not t[illegible] has been sold 26 C 73 (F B)=5 C [illegible] case has been followed in 28 C 813 [illegible] C W N 347, approved in 5 C L [illegible] 1 C L J 542 But in every case [illegible] as being contrary to the provisions [illegible] open to the plaintiff which have not been declared and specified in an appeal to the Commissioner under this section 21 C 70=20 I A 165, 32 C 111=8 C W N 767 A suit by a purchase of an estate sold for arrears of Government revenue to recover compensation awarded to him under this section by a Commissioner who set aside the sale can be maintained in a Civil Court 1 C W N 447

Power of Commissioner—Under this section the Commissioner has jurisdiction to annul a sale which may app[illegible] to the provisions of the Act 52 I[illegible] far as these relate to sale or to [illegible] well as the provisions of s 2 of the [illegible] press footing that they are to be applicable to the sale of the estates which are in arrears 25 C 832 P C=25 I A 151=2 C W N 513 The content on that the Commissioner can only act under this section when there has been a mistake in procedure and that in all other cases he must act under s 26 is not sound The power given to the Commissioner under this section goes beyond proper procedure 5 Pat L J 16

Annulment of sale in special cases

26 It shall be competent to the Commissioner of Revenue on the ground of hardship or injustice to suspend the passing of final orders in any case of appeal from a sale and to represent the case to the Board of Revenue, who* may annul the sale, and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper

Annu[illegible] the purch[illegible] larity und[illegible] 10 W R [illegible] is a matte[illegible] alone, hav[illegible] tion 7 I[illegible] the estate [illegible] aside [illegible]

Sales when final

27 [illegible] s 23 of this Act and [illegible] shall have been prefer[illegible] clusive at noon of the sixtieth † day from the day of [illegible] day of sale as the first of the said sixty † days

And sales against which an appeal may have been prefe[illegible] by the Commissioner, shall be final and conclusive from th[illegible] missal if more than sixty† days from the day of sale, or, if less [illegible] the sixtieth† day as above provided

Title of the purchaser—Under this section the title [illegible] the purchaser at the revenue sale by reason of the sale and [illegible] chase money It becomes complete as soon as the sale bec[illegible]

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* Here certain words have been omitted by Act IV of 192[illegible]

† The words "sixtieth" and "sixty" in s 27 have been [illegible] "thirtieth" and "thirty" respectively by Ben Act VII of 19[illegible]

made to the Commissioner under 'section 2 of the Bengal Revenue Sales Act 1868"* and no suit to annul a sale made under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act, and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase money

Proviso

Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged

Scope—This section not only applies to sales under s 14 but also to sales by public auction 21 C 844 But where the plaintiff has suffered no injury this section is fatal to the suit for setting aside a sale under s 14 (*a*) 41 C 1092 This section applies not only where the sale has been irregularly conducted but also where the sale has been illegal as held in contravention of an express provision for exemption 22 C L J 525 To set aside a sale under the Revenue Sale Law the party must show either want of *jurisdiction or material irregularity* which has resulted in substantial injury 35 C L J 221 In order that this section may come into operation it is necessary that there should have been a sale for arrears of revenue 51 C 776=78 Ind Cas 661

Irregularity—Want of previous notice *is sufficient to warrant a Court in* annulling a sale under this section 15 W R 137, 14 C 1 Where a notification of sale of a share in a revenue paying estate is issued under s 6, the circumstance that such notification does not contain the names of all the recorded proprietors of the share does not amount to an irregularity within the meaning of this section 9 C 591=12 C L R 27, see also 17 C 809=17 I A 57 This section is not applicable to a transfer by the Collector of the defaulting share under s 14 21 C 844 The onus of proving that there has been an irregularity in the preparation service or posting of the notice rests on the person who seeks to have the sale set aside 6 C W N 688, see also 6 C W N 526 A sale of an estate for arrears of embankment charges is not a sale for arrears of land revenue, and it is not competent to the Collector to hold such a sale under this Act 7 Ind Cas 43 Under rule 29 of the Land Revenue Sales A [illegible] he remitters an opportunity to rectify t [illegible] on the back of the money order that [illegible] nd the collecto rate would be guided b [illegible] at duty 9 C W N 300 The non issue of a notice under s 5 does not invalidate a sale for arrears of the revenue, the same being merely an irregularity contemplated by s 33 32 C 111=1 C W N 757, see also 14 C W N 626=5 Ind Cas 650, 10 C 63 Whether the non compliance with the provisions of the Act amounts to an illegality or an irregularity, it can be a ground of setting aside a *sale only if the party* complaining suceeds in proving that substantial injury has resulted from such non compliance 43 C L J 468=95 Ind Cas 353=30 C W N 618

Appeal to the Commissioner—In a suit to set aside a revenue sale the plaintiff cannot urge an [illegible] the Comms sioner 47 Ind Cas 4 [illegible] (F B) 66, 12 W R 3 [illegible] was rejected as being fi [illegible] the sale, although the p [illegible] sioner 2 C W N 513 [illegible] cesses would lie without previous application to the Commissioner 25 C 85

Limitation—The provisions of this Act are complete and therefore s 7 of the Limitation Act has no application to a suit to set aside a revenue sale 13 C W N 518=4 Ind Cas 70 Where one of the several co sharers fraudulently contrived to have an estate brought to sale under this Act and purchased it in the *benamee* of his son *Held* that another co-sharer aggrieved by the sale could maintain a suit to have the property re conveyed 3 C 300, 10 C 63, 16 C 194

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* The words within quotations have been substituted by Act IV of 1914

Receipt of purchase money—The receipt by a decreeholder of a portion of the surplus sale-proceeds lying in deposit in the Collector's Court, without opposition on the part of the judgment debtor is not such a receipt as is contemplated by s 33 13 W R 423

Damage—This section contemplates an action against the individual wrongdoer, irrespective of Government and co parceners 10 W R 442

Jurisdiction of Civil Court—The wording of this section is not restrictive so as to debar a person, who has in the property sold a substantial interest which is liable to be affected by the sale from instituting a suit to set aside the sale 7 C. W N 377, 5 M I A 447, 17 C 938, 21 C 70, 8 C W N 757, 16 C W N 137 This section applies to sale under s 14 18 C W N 1071 Where there is no arrear the Civil Court has jurisdiction to set aside the sale 25 C 833 P C.=25 I. A 151=2 C W N 513, see also 14 C 1 In order that a sale may be annulled by the Court a plaintiff must prove (1) that the sale was made contrary to the provisions of the Act, (2) that he had sustained substantial injury by reason of the irregularity complained of, and (3) that he had specified the irregularity in question in his appeal to the Commissioner 3 C W N 107

Effect of annulment of sale by decree of Court

34 If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof otherwise the party in whose favour such decree was passed shall lose all benefit therefrom

And no order for restoring such decree holder to possession shall be passed until any amount of surplus purchase money that may have been paid away by order of a Civil Court be repaid by him with interest at the highest rate of the current Government securities

And if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree he shall lose all benefit therefrom

Scope—This section applies merely to the case of an owner who has committed default, in payment of the revenue of his property and who subsequently by a [illegible] is not one under the [illegible] 34 has no operation whatever 78 Ind C [illegible]

Recovery of possession—Where a sale has been held when no arrears of revenue exists and original owner sues to recover possession and obtains a decree the decree is sufficient for the purposes of this section without a special declaration that the sale is annulled 12 W R 276, 12 W R 311 On a sale being set aside the decree holder of the defaulter who took the money is bound to refund the same 11 C 121

Limitation—This section refers to cases brought under s 33 and the rule of [illegible] execu[illegible] 33 19 [illegible] under [illegible]

If sale annulled purchase money to be refunded

35 In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.

Notes—*Vide* 7 C W N 377

36 Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf, partly of himself, and partly of another person though, by agreement the name of the certified purchaser was used, shall be dismissed with costs

Dismissal of suit brought to oust purchaser on ground that purchase was made for an other

Object—The object of th s sect on s o preven l e the title of his benameedar from enforcing a claim agair 12 C 308 This section is final in character and m t l e con d literally and is no bar to a suit to ous revenue sale on the ground of fraud The legislature in enacting this sectio possession a statutory title against the person if any on whose behalf he had purchased, and it cannot be held that death or assignment destroys the statutory title 2 C W N 433, 62 Ind Cas 662

Permanently settled Districts—*Vide* 14 C 440

Suit against or by certified purchaser—A certified auction purchaser suing to recover possess on of land from which he has been ousted is not debarred from the benefit of this section, unless he has acknowledged himself to be a benameedar 5 W R 56, 10 W R 167 In the absence of proof to the contrary such auction purchaser must be assumed to be the owner 15 W R 552 But when A purchased a mahal in the name of B who was acting as h s tahsi connected with that mahal *He* the suit 21 C 375 A benamee at a revenue sale and in whos entitled to maintain a suit for recovery of possess on of l nd property 14 Ind Cas 10 This section bars only and not against the representative 11 Inc W N 657, 5 C W N 341, see also 26 All 8 against the certified purchaser who made a co quitted actual possession to reconvey the property to him, *held* that the suit not being one to oust the certified purchaser from possession was not barred by this section 14 C 583, see also 17 C W N 57 A defaulting proprietor can also be a purchaser 11 W R 265, 1 C L R 565

37. The purchaser of an entire estate in the permanently settled district of Bengal, Bihar and Orissa sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all under tenures, and forthwith to eject all under tenants with the following exceptions —

Rights of a purchaser of permanently settled estate sold for its own arrears

First—istimrari or mukarrari tenures which have been held at a fixed rent from the time of the permanent settlement

Secondly—Tenures existing at the time of settlement, which have not been held at a fixed rent

Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of the such tenures

Thirdly Talukdari and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and firms for terms of years so held, when such tenures and firms have been duly registered under the provisions of this Act

Fourthly—Leases of lands whereon dwelling houses, manufactories or other permanent buildings have been erected, or whereon, gardens, plantations tanks,

wells, canals, places of worship or burning or burying grounds have been made, or wherein mines have been sunk

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent equal to the rent of good arable land for a term exceeding twelve years, but not otherwise •

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do

Proviso

Scope—This section does not apply to the auction purchaser of an estate not sold under this Act 1 W R 282 This section should be construed strictly and in favour of holder of incumbrances and under tenures so as to prevent hardship as much as possible 1 C W N 314, 55 Ind Cas 645

D-- 1 ... ollusion by the purchaser did ... revenue and ... substance, a transfer under pre arranged conditions to a purchaser who was a party to the arrangement and that the tenure holder is entitled to the declaration that the sale clothed the purchaser with the rights and privileges of a private purchaser and not with those of a purchaser at a revenue sale 7 Ind Cas 21=12 C L J 336 The position of the purchaser of an estate at a revenue sale at any rate in respect of his relations with his tenant is not absolutely independent of that of the ex proprietor 49 Ind Cas 956 The special authority given by this section to an auction purchaser ... f the estate purchased by him 15 W R 481 ... auction-purchaser of an entire estate can exer- ... s of s 37 of the Act 10 C W N 148, 22 ... 12 C L J 497=8 Ind Cas 786, ‹ C L J ... C W N 706 The word 'purchaser" does not ... and the certified purchaser is not the only person who can sue an encumbrancer for ejectment under that section 15 C W N 706=7 Ind Cas 849, see also 9 C L J 11=35 C 931

Entire estate—A purchaser for a fractional share does not acquire any such right 20 W R 264, 23 W R 387, 12 C L J 407

Free from all incumbrances—An auction purchaser with a permanent title under this section acquires the estate free from any encumbrances accruing from the laches of former proprietors 15 W R 552 22 W R 126 As to suits to avoid encumbrance against some co-sharer, tenure holder if bars suit *vide* 8 C W N 54 To bring a case within the words of s 37 three things must occur, there must be a sale (1) of an entire estate (2) in the permanently settled districts (3) for its own arrears 6 Bom L R 754 The rights must be exercised by all the purchasers jointly 24 C 334 The word "purchaser' in this section does not mean only "a certified purchaser or his heirs or assignees The real purchaser is a purchaser within the meaning of the section and is entitled to avoid encumbrance 23 Ind Cas 917 Patnidar purchasing zamindari at sale for arrears of revenue has no right to annul subordinate tenures 18 C W N 672

An encumbrance or under tenure is not *ipso fa to* avoided by a sale of an estate for arrears of revenue and is only liable to be avoided at the option of the purchaser at such sale an option which may be exercised by the institution of a suit under this section within the time allowed by law or by actual ejectment by the Collector under s 39 6 C L J 472 An encumbrance can also be avoided by giving notice to vacate 39 Ind Cas 273

Settlement—The word 'settlement in this section must be taken to mean the permanent settlement of the estate concerned and not the year 1793 in which the

greater portion of Bengal was permanently settled 18 Ind Cas 872, 24 W R 476, 34 C I J 485

Under tenures and under raiyats—The title of an auction purchaser to avoid an under tenure and eject a tenant depends on whether the tenure is protected under this section and whether the tenant has a right of occupancy 12 W R 123 The onus of proving that under tenures in a taluk sold at a sale for arrears of revenue fall under any of the exceptions to this section is on the person alleging the tenure to be within such exceptions 15 C 555 Notwithstanding that a party may fail to show that his tenure comes within any of the first exceptions of this section he is entitled to the benefit of the 4th exception in respect of any dwelling houses or other permanent structures that may be upon his holding 8 C 293. Where an auction purchaser claims lakhiraj *property of the defendant* the onus is on the plaintiff to show that it is his *mal* land 14 Ind Cas 99 14 Ind Cas 757 Where an auction purchaser at a revenue sale creates a *patni* that by itself is not an intimation to the under tenure holders that the under tenure has been annulled 68 Ind Cas 449, 1923 Cal 195

Istimrari or mukarari tenures—Portion of taluk existing at permanent settlement but transferred and held under different names if protected—*Vide* 19 C W N 79 A *mukarari* is not an encumbrance at all except for the purposes of the Bengal Land Revenue Sales Act, 43 Ind Cas 16

Permanent Settlement—The word 'permanent settlement in the first exception means the permanent settlement of 1793 and not the permanent settlement of any particular mahal 5 P L J 79=54 Ind Cas 658 10 C W N 503

Dwelling house—A dwelling house to be exempted under this section must be a dwelling house of a permanent character and mere huts would not come within the description 3 C W N 212, 3 C W N 341, 30 C 498, 20 C W N 1028=36 Ind Cas 184, 90 Ind Cas 902

Gardens—Whether there is a garden in the land so as to bring the case within exception 4 of this section is a question of fact But the determination of the ques[illegible] dependent upon the several elements which [illegible] ly, *first*, the number of trees on the land [illegible] their number in relation to the area covered [illegible] belong 7 Ind Cas 912 The existence of a [illegible] s not comply with the requirements of the condition of the 4th exception to this section 7 Ind Cas 327 Leases of lands which may not have been expressly leased for the purpose of making gardens thereon, but on which gardens have subsequently been made are under the provisions of this section, protected from avoidance by an auction purchaser 12 C 327, see also 23 W R 387, 23 C W N 325=50 Ind Cas 407, see also 7 Ind Cas 912 20 C L J 494

Tanks—A lease of tank without any portion of the surrounding land is not protected under clause (4) as it is not within the meaning of that clause a lease of land whereon a tank has been excavated 2 C W N 412 A right of occupancy could be acquired on the share of a tank and when acquired would be protected under this section 8 C W N 102, 8 C W N 601, see also 9 C W N, 852, 12 C W N 1029 A tank existing from before the defendant's lease is not protected 41 Ind Cas 1, see also 58 Ind Cas 28, 58 Ind Cas 543 To bring it within exception (4) it need not be shown that a lease was made for the purpose of excavating a tank To constitute a house a permanent house within the exception it need not be a masonry house 5 Pat 726=96 Ind Cas 575=A I R 1926 P 416

Raiyats holding [illegible] the persons referred to [illegible] by has been extended [illegible] rates to all classes of [illegible] 223, see also 8 C W [illegible] (P C), 27 C L J 289, 49 Ind Cas 959, 35 C L J 212 A suit for assessment of rent under this section is maintainable in the Civil Court 21 C L J 637=30 Ind Cas 53

Lakhiraj land—A purchaser of an entire estate suing to recover land claimed by the defendant as *lakhiraj* is bound in the first instance to prove a *prima facie* case

of payment of rent since 1790 or that the lands formed part of the real assets of the estate at the Decennial Settlement The mere fact that the lands are situate within the ambit of the estate is not sufficient to discharge the burden of proof Where such a *prima facie* case is made out by the plaintiff, the *onus probandi* is shifted on to the defendant to show that his tenure existed rent free before 1790 5 Pat 726=96 Ind Cas 575=A I R 1926 P 416

Registration of certain tenures and farms

38 The following rules for the registration of talukdari and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and of farms for terms of years so held, shall be observed

Common and special registry.

39 There shall be two sets of registers, one for common registry and one for special registry Common registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue except the Government

Special registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue including the Gover ment

Notes—The fact that a tenure is registered in the common registry under this section is not of itself *prima facie* evidence that such a tenure exists 9 C 116=12 C L R 89

Application for registry

40 The holder of any talukdari or other similar tenure, such as is described in section 38 of this Act, desirous of registering it, shall apply by petition to the Collector of the district to which the estate belongs

The application* shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable —

(1) the pargana or parganas in which the tenure is situated ,

(2) the nature of the tenure ,

(3) the name or names of the village or villages whereof the land is composed, or wherein it is situated ,

(4) the area of the land comprised in the tenure with its boundaries in complete detail ,

(5) the amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties if any, required to be performed on account of it ,

(6) the date of the deed constituting the tenure, or the date when the tenure was created ;

(7) the name of the proprietor who created the tenure ,

(8) the name of the original holder of the tenure ,

(9) the names of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, [illegible] like [illegible] appli cable to farms

Procedure on application for common registry

41 When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or [illegible] ion annexed , and shall cause a notice [illegible] to be affixed in his office, and at th[illegible] the tenure or farm is situated, or [illegible]

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* As to time limit for applications under s 40 for registry of tenures [illegible] fees chargeable,—see Ben Act III of 1862, ss 2 and 3

other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any party interested, within thirty days from the issue of the said notice to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application

If within the limited time no objection is made, the Collector shall register the tenure or farm

If within the limited time an objection is made by any recorded proprietor, or by any party interested not being a proprietor, the Collector shall examine the person so obje . . . it shall appear to him that such person h . . . Collector shall suspend proceedings, and . . . ourt ; otherwise he small grant the application

If the decision of the Civil Court be in favour of the applicant, the Collector on the presentation of a copy of the final decree shall register the tenure or farm.

Procedure on application for special registry

42 When the application is for special registry, the Collector shall serve and issue the notice prescribed in the last preceding section * If within the limited time no objection is made, the Collector shall cause any inquiry that he may deem necessary for the security of the Government revenue to be made and *if he is satisfied that the Government revenue of the parent* state is sufficiently secured so far as it may be effected by the tenure on farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application , otherwise the application shall be rejected

If within the limited ti . . . or any party interested not being a proprietor, obj . . . examine the person so objecting or his . . . to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made

If the decision of the Civil Court, be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time

Registration of leases of certain lands

43 Leases of lands of the description specified in the fourth exceptional class in section 37 may be registered at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of talukdari and other similar tenures

44 . . .

Registrat

register †

Application for such registry shall contain the particulars specified in section 40, for as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section 41.

If within the limited time no objection is made by any recorded proprietor or by any party interested not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy him as to the validity of the tenure , and *if the result be to satisfy him that the tenure is valid, he shall report the case to* the Commissioner, who, if also satisfied that the tenure is valid shall direct it to

* As to the registration of rent free tenures in the manner laid down in s 42, see Ben Act VIII of 1876, s 96

† As to time limit for application for registry of tenures and as to fees chargeable, see Ben Act III of 1862, ss 2 and 3

be entered in the special register, otherwise the application for registry shall be rejected

If within the limited time any recorded proprietor or other party as aforesaid object to the registry of the tenure, the Collector shall examine the person so objecting or his authorized agent and, if it shall appear to him that such person has probable ground of objection shall suspend to the Civil Court otherwise he shall proceed

ourt be in favour of the applicant the Collector on the presentation of a copy of the final decree shall proceed as above p o vided for cases in which no objection is made within the limited time

Proviso

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the pro tection of *bona fide* tenures of the description herein referred to

45 [*Time for application for registry of tenures and farms*] *Repealed By Ben Act III of 1862 s 1*

Expenses of measurement, survey or local enquiry

46 The actual expenses of any measurement, survey, or local enquiry made under sections 42 and 44 of this Act, shall be borne by the party who applies for the registry of his tenure or farm, and such party may be required by the Collector from time to time to make such advances on this account as he may consider necessary

Civil Court not competent to order entry in the special register

47 No Civil Court shall be competent to order the Revenue authorities to enter any tenure or farm in the special register

Provided always that the refusal of the revenue authorities so to register any tenure or farm shall not affect the title of the holder whatever it may be

Suit for cancelment of registry of tenure or farm

48 Subject to the general law of limitation any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same

Proceedings of Revenue authorities in registration of tenure &c

49 In the execution of their functions in the registration of tenures and farms under this Act all subordinate Revenue authorities shall proceed in accordance with the general instructions which they may receive from the superior Revenue authorities to whom they are subordinate and from the Local Government, and all orders passed under the sections aforesaid shall be open to appeal in usual course

The order of a Commissioner for the special registry of a tenure under the provisions of this Act shall be open at any time within one year from the date of registry to revision by the Board of Revenue,* on the ground of the Government revenue not having been sufficiently secured or of the invalidity of the tenure as the case may be •

Effect of entry in special register

50 Entry in the special register shall be an effectual protection of the tenure or farm so registered unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a decree be passed, pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue

• Certain words here have been omitted by Act IV of 1914

Provided that a tenure or farm in the hands of a *bona fide* purchaser for value shall not be avoided by reason of such fraud.

But the tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector

Protection of taluqdari tenures pending enquiry in case of sale of parent estate for arrears of revenue

51 Tenures and farms of the third exceptional class described in section 37 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in section 42, shall in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration if the final award of the Revenue authorities upon such application be in favour of the claimant

Rights of purchaser of estate not permanently settled, sold for its own arrears

52 The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or h [illegible] original engagor, as well [illegible] accredited by the first [illegible] settlement, as well as [illegible] alter or renew [illegible] manufactories [illegible] ardens planta [illegible] burying grounds have been made, or wherein mines have been sunk, which leases or engagement shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect

Provided that nothing contained in this section shall [illegible] any [illegible] rate [illegible] aforesaid than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land or in cases in which it may be proved that, according to the custom of the pargana, mouza or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government

Notes—7 W R 318

Rights of purchaser being sharer in estate,

and of purchaser of estate not sold for its own arrears

53. Excepting* share with whom the Collector, under sections 10 and 11 of this Act, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co partner, or who by re purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall

* Here certain words repealed by Act XIII of 1891, Schedule I, have been omitted

not acquire any rights in respect to under tenants or raiyats, which were not possessed by the previous proprietor at the time of the sale of the said estate.

Scope —This section
11 W R 275 The lan
from those of s 54 of
to all encumbrances exi
brances created after default is binding on the purchaser 7 C L J 1, 35 C L J 185 The purchaser who is the benamidar for the defaulting proprietor is only entitled to take the property subject to the encumbrance created by the defaulting proprietors 96 Ind Cas 404

Distinction between this section and section 54 —There is a clear distinction between the rights acquired under this section and s 54 Under this section the terms of the certificate given under Schedule A, are limited and purchaser under that section acquires the estate subject to all encumbrances existing at the time of sale whether c
there is no su
s 54 and all
section takes eff
17 C 148 Ac
C 244 An estate does not becom
the purchaser does not avoid them
whom the Collector has opened
Revenue Sale Law means sharer
14 C L J 552 Adverse posses
53 and the proprietor of an estate
ssession for the statutory period
rchasing the estate at the revenue
461
W N 786=31 I A 76 (P C)

54 When a share of or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners

Rights of purchasers of shares of estate

Subject to all encumbrances —The object of this section is to protect only *bona fide* encumbrances and not encumbrances executed in contemplation of an impending sale or in *fraud* of a possible purchaser Where surrounding circumstances suggest such creation, it is for the party setting up the encumbrance to

C 105=21 I A 118 The purchase of a share of an estate does not amount to an encumbrance within the meaning of this section 11 C W N 821 Where adverse possession is completed before or after the date of default, a purchaser at a revenue sale of a share of an estate in respect of which a separate account has been opened in the Collectorate becomes entitled to possession of the share If the adverse possession was completed before default, the default must be treated as the default of the person who has acquired title by adverse possession and the sale must be held to pass his interest 12 C W N 528; see also 22 C 244; 13 C W N 407=1 Ind. Cas 88 But see 43 Ind Cas 61 The purchaser under this section purchases the share and not the right, title and interest of the defaulter 15 C L J 436=16 C W. N.

587. A purchaser of a share of an estate at a revenue sale under s 13 does not acquire all the rights possessed by the pro

the sale 7 C L J 387 e date of
C W N 677=11 C L vide 14
ue under
the Act, effect of on mortgage created between date of default and date of sale—*charge on sale proceeds*, *vide* 3 C L J 52, see also 16 C W 985 A lease of a right to collect rent from the *mukararidar* of the entire share of a proprietor is an *encumbrance* 63 Ind Cas 183 Where out of the income of a property a sum of Rs 120 was being paid to
draw an inference that
arrears of revenue under s
In such a sale, no question of notice arises 91 Ind Cas 411=A I R 1926 Cal 552

Recovery of arrears due to defaulters

55 Arrears of rent, which on the latest day of payment may be due to the defaulter from his under tenants or raiyats shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day

Punishment for contempt

56 Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open *kachari* or office for the time being, by fine to an extent not exceeding two hundred rupees, commutable,
exceeding one
by a Collector
Provided
to the Revenue Commissioner, whose decision shall be final.

Default as to deposit a contempt

57 A default to make good a bid by making the deposit required by section 22 of this Act shall be held to be a contempt.

Government may purchase at a sale

58 When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on account of the Government for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid, may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provision of this Act

Scope.—
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had purchased the property on account of the Government at the bid of Rs 10 under
s 58 of
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58 of the

59. [*Fees and charges demandable by Collector.*]—*Repealed by Ben Act III of 1862, s. 1.*

60 The provisions of Regulation VII, 1822, and Regulation IX, 1825, shall be in force in every estate in any part of which a measurement survey or local enquiry may be made under this Act, and in every estate purchased or taken on account of Government under this Act

Regulations VII, 1822, and IX, 1825, in force in certain estates

61 In the construction of this Act the word "Collector" shall include a Deputy Collector or other officer exercising, by the authority of Government, the powers of a Collector or Deputy Collector

Interpretation

62 The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general Regulations of that Presidency

Application of Act

SCHEDULE A

I certify that *A B* has purchased under Act No XI of 1859, the mahal [*or* share of a mahal] specified below, standing in the tauji of the district of and that his purchase took effect on the day of

[*being the day after that fixed for last day of payment*]

(Signed) *D E*
Collector

SPECIFICATION

(*If of an entire mahal*)

Tauji number
Name of mahal
Name of the former proprietor
Sadar jama

(*If of a share of mahal*)

Tauji number of the entire mahal
Sadar jama of the entire mahal
Name of the entire mahal
Description of the share sold
Subordinate tauji number of the share sold
Name of the former proprietor of the share sold
Sadar jama for which the share sold is separately liable

SCHEDULE B *

THE INDIAN SALE OF GOODS ACT, 1930

CONTENTS

CHAPTER I

PRELIMINARY

CHAPTER II

FORMATION OF THE CONTRACT

Contract of Sale

* Schedule B has been repealed by the Repealing and Amending Act I of 1903

"Whatever merit the simple and elementary rules embodied in the Indian Contract Act may have had and however sufficient and suitable they may have been for the needs which they were intended to meet in 1872, the passage of time has revealed defects the removal of which has become necessary in order to keep the law abreast of the developments of modern business relations The law relating to the sale of goods appertains mainly to mercantile transactions There can be doubt that during the last half-century cond
have undergone material chang
relations have arisen between
been necessary to give recogi

The result
pter VII of
s from the
dec,sions of the English Courts.

"The English
Chapter VII of
ges and was fin.
71) which discar
Indian Act was based, in favour of provisions more suited to modern conditions or more convenient in actual practice

"By the Bill referred to for our consideration, the law relating particularly to

and could not pretend to be, a complete code upon the branch of law to which it related He, however, expressed a hope that in later years it would be easy to enact supplementary chapters relating to the several branches of the Law of Contract which the Bill did not touch. This hope has never been fulfilled In later years it was
enactments for the several branches of the
Instruments
complexity of
accelerated
in separate
self-contained enactments ; and we hope that the Bill which we attach to our report may be passed into law at any early date and may be but the first of the series required to complete the task, which we have outlined above—*Report of the Special Committee.*

Origin of the Act—"The Bill referred to us was mainly based on the English
of nearly thirty-five years of
in re Peirchim (1918), A. C.
codification of this branch of

very largely on the English Act. These facts constitute striking evidence

[illegible]

useful to meet special conditions existing in India"—*Report of the Special Committee*

Scope of the Act—The present Bill embodies the principle that the question whether a contract for the sale of goods does or does not pass the property in the goods from the buyer to the seller must in all cases be determined by the intention of the parties to the contract The provisions of Chapter VII of the Indian Contract Act are vague and conflicting on this point The Bill codifies the rules by which that intention may be ascertained but the operation of these rules will be displaced by any terms of the contract [illegible]
including the conduct of th[illegible]
principle we have borne in m[illegible]
is often of more importance than the substance [illegible] the parties known beforehand what their legal position is, they can provide for their particular wants by express stipulations Sale, after all, is a consensual contract and the Bill does not prevent the parties from making any bargain they please Its object is to lay down clear rules for the cases where the parties have either framed no intention or failed to express it

"The distinction between a sale and an agreement to sell which was not clear in Chapter VII of the Indian Contract Act, has been clearly brought out This distinction is very necessary to determine the rights and liabilities of the parties to the contract

"*It is made clear that a contract of sale can be made by mere offer and acceptance* Neither payment nor delivery is necessary for the purpose

"Before 1893 t[illegible]
very confused state[illegible]
in a very vague ser[illegible]
a party aggrieved b[illegible]
him to claim damag[illegible]

"There is much[illegible]
108 of the Indian C[illegible]
to a certain extent[illegible]
tried to remove th[illegible]
the subject

"We have elaborated the rules relating to delivery to carriers, stoppage in transit and auction sales

"We have anxiously considered the question of the retention of the illustrations appearing in Chapter VII of the Indian Contract Act and of the insertion of illustrations to new provisions Our decision is that the better policy is to forego all illustrations, leaving the Courts to construe the sections as they stand —*Report of the Special Committee*

Definitions

2 In this Act, unless there is anything *repugnant in the subject or context*,—

(1) "buyer" means a person who buys or agrees to buy goods,

Notes—A buyer and a seller must be different persons *Scotson v Pegg*, 6 H. & N 295 The definitions in this clause have been taken from section 62 of of the English Sale of Goods Act, 1893 (56 & 57 Vict, c 71)—*Notes on Clauses*

(2) "delivery" means voluntary transfer of possession from one person to another,

Notes—Delivery primarily signifies the act of transferring the possession of a movable thing from one person to another, thus the delivery of goods is a necessary part of the transaction called a sale Delivery is either actual or constructive thus if goods cannot conveniently be actually handed from one person to another, as if [illegible] the delivery of the key of the warehouse, a delivery [illegible] e or symbolical delivery of the goods them[illegible] 503, *Sanders v Mac Lean*, 11 Q B D 327, [illegible] 11) 1 K B 934, *The Prince Adalbart* (1917) [illegible] 21) 1 K B 807.

No definition of the word "possession" is given in the Act In its primary sense possession is the visible possibility of exercising physical control over a thing coupled with the intention of doing so, either against all the world or against all the world except certain persons There are, therefore, three requisites of possession First there must be actual or potential physical control Secondly physical control is not possession unless accompanied by intention hence if a thing be put into the hand of a sleeping person, he has not possession of it Thirdly, the possibility and intention must be visible or evidenced by external signs for if the thing shows no signs of being under the control of any one it is not possessed —*Byrne's Dictionary of English Law*

(3) goods are said to be in a "deliverable state' when they are in such state that the buyer would under the contract be bound to take delivery of them ,

(4) "document of title to goods" includes a bill of lading, dock warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented ,

Notes —In regard to the definition of the term "document of title" the term has been used in sections 102, 103 108 and 178 of the Indian Contract Act, 1872 It has been held by the Privy Council in *Ramdat* v *Amar Chand*, 43 I A 164 that it has the same meaning as it had in the Indian Factories Act of 1840 which is wider than the definition in the English Act —*Notes on Clauses*

'A suggestion has been made that a mate s receipt should be included in the definition of document of title to goods We considered the suggestion and have come to conclusion that notwithstanding the irregular practice in Calcutta of treating a mate s receipt on the same footing as a bill of lading a mate's receipt can not be treated as a document of title A mate's receipt is a mere acknowledgment of the receipt of goods on behalf of the ship The person in possession of the mate s receipt is as a general rule entitled to a bill of lading, which is the document of title to the goods The High Court of Calcutta has taken the same view and we are not aware of any judicial decision which regards a mate's receipt as a document of title In England it has been held that mere endorsement or transfer of mate's receipt without notice to the ship owner or his agent does not pass the property in the goods, as a custom to that effect is bad If a mate's receipt were treated as a document of title, then on the issue of a bill of lading with it the mate's receipt having been surrendered, there will be two documents of title in existence relating to the same goods This would be highly undesirable from business point of view "—*Report of the Select Committee*

(5) "fault" means wrongful act or default ,

Notes —Wrong is that which takes place when a right is violated So in the word "wrongful' is implied the "infringement of some right' 23 Q B D 598 As regards the meaning of default *vide Re Young and Harstons' Contract*, 31 Ch D 168

(6) ' future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale ,

Notes —"The term "future goods", although not very happy has been held to be convenient *Ajello* v *Worsby*, (1898) 1 Ch at p 280 We have therefore retained it and defined it on the line of the English Act with the addition of the words 'or produced to include agricultural products specifically "—*Notes on Clauses*

(7) "goods" means every kind of movable property other than actionable claims and money , and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale ,

Notes —In the definition of the term "goods" we have included shares In *Fazal* v *Mongal Das*, 46 B 489, it was held that the 'goods' as used in Chapter VII of the Indian Act, 1872 has a much wider sense than it has in the English Law and includes share certificates —*Notes on Clauses* 'Goods," said *Coke*, "include all

chattels, as well real as personal Current coins are not goods *Banque Belge* v *Hanbruck*, (1921) 1 K B 321 (326) But they are so when sold as curios *Moss* v *Homcock*, (1899) 2 Q B 111 As regards whether a ship can be treated as goods *vide* *Bethuke* v *Bede Shipping Co*, (1907) 1 K B 649, *Hooper* v *Gumrv* 2 Ch D

of the nature of General Clauses Act 134 Ind Cas 511

(8) a person is said to be 'insolvent' who has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of insolvency or not

Notes—It corresponds to the definition given in section 62(3) of the English Act General inability to pay debts is sufficient *Parker* v *Gossage* 2 Cr M & R 667, *Biddlecombe* v *Bond* 4 Ad & E 332, *Re Phœnix Ressemer Steel Co* 4 Ch D 108 C A No adjudication is necessary *Newson* v *Thornton* 8 R R 278, *Bird* v *Brown*, 80 R R 775 *Dixon* v *Yates*, 39 R R 489 A petition for bankruptcy is sufficient *R* v *Saddler s Co*, 10 H L Cas 404, *Nixon* v *Verey* 29 Ch D 196 As regards acts of insolvency under the Indian Law, *vide* s 6 of the Provincial Insolvency Act V of 1920 and section 9 of the Presidency Towns Insolvency Act III of 1909 See also 2 C W N 306

(9) "mercantile agent' means a mercantile agent having in the customary course of business as such agent authority either to sell goods or to consign goods for the purposes of sale, or to buy goods or to raise money on the security of goods

Notes—This definition is taken from section 1(1) of the English Factors Act of 1889 (52 & 53 Vict, c 45) Agents employed for the sale of goods or merchandise are called mercantile agents and are of two principal classes brokers and factors *Byrne s Law*

Heyman v

mercantile ag

business as

L J K B 17

Weiner v *Harris* (1910) 1 K B 285=79 L J K B 342

(10) "price" means the money consideration for sale of goods,

Notes—We have added the definition of the word 'price as used in the English Act—*Notes on Clauses*

(11) "property" means the general property in goods and not merely a special property,

Property—In its largest sense 'property signifies things and right considered as having a money value, especially with reference to transfer or succession and to their capacity of being injured Property includes not only ownership, estate and interest in corporeal things but also rights such as trade marks, copyrights of patents and rights *in personam* capable of transfer or transmission, such as debts This definition makes a distinction between general and special property General property is that which every absolute owner hath *Co Litt* 145 B Special

ct matter is incapable

i may have a property

etc, but it is only a

r natural liberty his

property instantly ceases unless they have *animus revertendi* Secondly, a person may have a special property in a thing in the sense that he can only put it to a particular use Thus in the case of bailment, the bailee has a special property in the thing bailed, for he is entitled to deal with it in accordance with the contract of

ong-doer

that the

show a

Notes—For distinction between description and quality of goods *vide* *Manchester Liners* v *Rea Ltd*, (1922) A C 74=91 L J K B 504=127 L T 405

(13) 'seller" means a person who sells or agrees to sell goods,

Notes—This definition follows from the definition of 'sale and agreement to sell given in section 4, *infra*

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made, and

Notes—This definition is taken from section 62(1) of the English Sale of Goods Act, 1893 (56 & 57 Vict c 71) Specific goods must be ditinguished from unascertained or generic goods, *i e*, goods defined only by description Under a contract for specific goods the seller does not fulfil his contract by delivering any goods other than those agreed upon, under a contract for generic goods the seller may deliver any goods which answer to the description, the property in specific goods may be transferred by the contract itself, but no property can be transferred so long as the goods are unascertained (*vide* sections 18 to 23) Again, specific goods may be the subject of an action for specific performance (*vide* section 58) So when there is a contract for specific goods and the goods have perished at the date of the [illegible] to the buyer, the contract [illegible]) As regards unascertained [illegible] is conceived that the term [illegible] specific, and is not confined [illegible] goods So the term specific includes the future crop of a particular land *Howell* v *Coupland*, (1876) 1 Q B D 258, *Halsbury*, vol XXV p 122 But if the whole crop is not meant it would not fall under the definition *Kursell* v *Timber Operators* (1927) 1 K B 298

(15) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872 * have the meanings assigned to them in that Act

3 The unrepealed provisions of the Indian Contract Act, 1872,* save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts for the sale of goods

Application of provisions of Act IX of 1872

[illegible] been inadvertently omitted

CHAPTER II

FORMATION OF THE CONTRACT

Contract of Sale

4 (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price There may be a contract of sale between one part owner and another

Sale and agreement to sell

(2) A contract of sale may be absolute or conditional

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred

Notes—Considerable confusion has been caused by the definition of sale in section 77 read with section 78 of the Indian Act of which the marginal note is sale how effected' The last two paragraphs of section 78 contain a good many words which are unnecessary and only create confusion It will be observed from the

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* Act IX of 1872

definition of 'contract of sale in the English Act that it confuses two things, namely, (i) sale and (ii) agreement to sell It may perhaps be said that, having

[illegible]

the Special Committee

As regards sale and hire purchase agreement, *vide* 6 Bom L R 871, 51 M 829, *Belsize Motor* v *Cox* (1914) 1 K B 244

Formalities of the Contract

Contract of sale how made

5. (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth or partly in writing and partly by word of mouth or may be implied from the conduct of the parties

Notes —"Sub-clause (1) of this clause is based on the general principle laid down in the Indian Act that a contract is effected by an offer and an acceptance accompanied by consideration The corresponding section in the Indian Act is section 78 It refers to the making of a sale as well as to the passing of property In our opinion it is desirable to keep the two matters separate So far as the making of a sale is concerned, section 78 seems to be open to the following objections —although by its marginal note it purports to lay down a sale relating to sales generally, it deals only with the simplest case of a sale of ascertained goods for a fixed price (2) After stating that a sale can be effected by offer and acceptance of goods for a price and *vice versa* it goes on to enumerate various circumstances which would constitute a sale This enumeration or description is neither accurate nor complete, and should not find a place in a provision which is of a declaratory nature (3) The acceptance referred to in the section is the acceptance of goods as distinguished from the

[illegible]

the words "subject to the provisions of any law for the time being in force," we have omitted the proviso relating to corporations which occurs in the English section"—*Report of the Special Committee*

As regards contracts which are partly written and partly oral, *vide* 30 Bom L R 1, 30 Bom L R 415, 54 C 97, 19 Bom L R 845 A written offer to sell may be

verbally accepted, or a ... *Il*,
10 Q B D 178, 188 ... nd
given effect to like ... 2
Exch 193, 200.

Subject matter of Contract

6 (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller of future goods

Existing or future goods

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods

Notes—This clause is taken from section 5 of the English Act As to sub-clause ... with con- ... of future ... ave been ... and have ... 8 do not,
however, contain a cc ...
desirable to lay dowr ...
that a contract which p ...
as an agreement to se ...
cases should be dealt w ...
for future goods is also ...
10 B & C 446, *Wilks* ...
Pinner v *Arnold*, 2 C ...
Mortimer v *M'Callo* ...
Worsel, (1893) 1 Ch 274

Clause (2)—... 1 Q B D
258 A contract ... he contract
shall be conditio ... able in any
event (*Covas* v *Bingha* ...
on the part of the sell ...
the goods [*Sphdt* v ...
324, *Hale* v *Rawson*, ...
on both sides, and if ...
their obligations *Hayw* ... Camp 30

7 Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before making of contract

Notes—This clause follows section 6 of the English Act The rule is based either on the ground of mutual mistake or on the ground of impossibility of performance (*Chalmer's Sale of Goods*, p 30 Ed 10th) Although in Chapter VII of the Indian Act there is no specific provision corresponding to ...

they have ceased to exist in a commercial sense, that is, if their merchantable character as such has been lost, (*vide Benjamin on Sale*, p 161, *Halsbury's Laws of England*, Vol 25 p 145) Chalmers in his book on the Sale of Goods is inclined to think that in ...
destroyed as no ...
It, however, appe ...

that with reference to that section also the goods will be considered as of a perishable nature not only when they are such as to deteriorate physically by being kept, but also when they are such as to be subject to ... so as to be likely to become unmerchantable ... s
bury's Laws of England, vol 25, p 264 c ... ;
Asfod & Co v Blundell, (1896) 1 Q.B 123 ... ;
Sharp v Christmas, 8 T. L R. 617 C A) Although there is no direct authority on the point, there seems to be a strong opinion in favour of the view that the import of the word 'perish' is not to be restricted to mere physical destruction We agree in that opinion and have accordingly made it clear that the goods must have been either physically destroyed or so damaged as not to answer the description given in the contract. With this alteration we have adopted the provision of section 6 of the

... eason of the partial loss of the goods ... within the meaning of this clause so ... the circumstances of each case. The ... contract was entire or divisible [*Cf* *Barraw v. Philip*, (1929) 1 K B 574]

"In the course of the discussions on clauses 7 and 8, a point was raised that inasmuch as under the terms of the two clauses the agreement is either void or the contract becomes void, these clauses might have the effect of rendering void every kind of contract relating to the sale of goods, lost or not lost, and that they might have the effect of hitting at c i f contracts It was urged that a c i f contract was ... the tender of documents, and such a ... clause 62 of this Bill corresponding ... think that clause 62 is comprehen- ... would be saved by the clause We ... Mr Chalmers on page 31 of his commentary on the Sale of Goods Act "—*Report of the Special Committee*

Without the knowledge of the seller.—When the seller knows of the loss at the time of the sale he will be estopped from asserting that the contract is void. *Smith v Hughes*, 6 Q. B D 597

Goods perishing before sale but after agreement to sell

8 Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

Notes—"The clause relates to the impossibility of performance arising after the contract is made and is based on section 7 of the English Act It is true that Chapter VII of the Indian Act does not contain a specific provision on the point. But the principle is well established and underlies section 56 of the Indian Act We think it is desirable that it should be included in the present Bill as a specific provision. For the reason stated in the note to preceding clause, this clause has been found to cover the case of goods which are so far damaged as not to answer ... The words "the agreement is avoided" occur- ... A question might arise by ... efore, substituted the words ... of the Special Committee ... pt the words 'agreement is ...

258 see also *Rugg v Minett*, 11 East. 210 ; *Taylor v Caldwell*, 3 B & S. 826 ; *Elphick v Barnes*, 5 C. P D. 321 ; *Stubbs v Holywell Rail Co*, L R, 2 Exch. 311

a port on of the spec fic bulk remains undestroyed the seller is wholly discharged or must deliver as much as he can It
facie an entire one for the whole quantity
ed see a somewhat similar case of L
Borrow v Philip (1920) 1 K B 574 Sc
be sold under an entire contract, and one
ly discharged from delivering the othe
(Dig 18 1 44) —Halsbury's Laws of England, vol 25 p 147

The Price

9 (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties

Ascertainment of price

(2) Where the price is not determined in accordance with the foregoing provisions the buyer shall pay the seller a reasonable price What is a reasonable price is a question of fact dependent on the circumstances of each particular case

Clause (1)—For explanation of this clause *vide Valpy* v *Gibson* 4 C B 837 ; *Blyoce* v *Swan* 17 C B N S 84 93 , *Churchil* v *Wilkins* 1 Term Rep 47 *Smith*

(1918) A C 157 *Anderson* v *Morice* (1876) 1 Ap Ca 713 , *Joice* v *Swan*, 14 R R 157

Clause (2)—The effect of this section is to enact as a rule of law that which in the circumstances of the case must be presumed to have been the intention of the parties Where people buy and sell without taking the trouble to ascertain or name
o abide by ordinary rates and to sub
unals *Cunningham's Contract Act*
As regards how to determine a rea
6 *Hoadly* v *M Laine* 10 Bing 482 ;
Fidgeon, 6 Taunt 108 , *Chunnes* v
Q B 102 Where the ascertainment
red tested or counted or
them and such act has
if l able to pay the price
England vol 25 p 147 ,
le v *Playford*, L R 7
Exch 98

10 (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation the agreement is thereby avoided

Agreement to sell at valuation

Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he shall pay a reasonable price therefor

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer the party not in fault may maintain a suit for damages against the party in fault

Notes—This section is a corollary to the preceding section It is not uncommon for the parties to agree that the price of the goods will be fixed by valuer appointed

by them In such cases they are bound by the bargain, and the price so fixed is as much part of the contract as if fixed by themselves But it is essential for the for [illegible]

[illegible]

and Greene, 18 Q B D 7 C A, see also [illegible] Stewart v Williamson, (1910) A C 455 Where the party appointed to make the valuation fails or refuses to make the valuation there is no valuation *Loftus* v *Robert*, (1902) T L R 53[illegible]

The proviso to clause (1) lays down that where the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price for the same See also *Clarke* v *Westroppe* 18 C B 765, 46 A 211

Agreement is thereby avoided.—'For the words agreement becomes void which occur in both clauses, we have substituted the words agreement is avoided In our opinion the latter expression, which occurs in the corresponding section of the English Act conveys the intention more clearly —*Report of the Select Committee*

Conditions and Warranties

Stipulations as to time

11 Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract

Origin of the section—'This section is based on section 10 of the English Act The principle underlaying that section is to be found in section 55 of the Indian Act In our opinion the present Bill should contain a specific provision on the point As the General Clauses Act, 1897 contains a definition of the word 'month sub section (2) of the English section has been omitted —*Report of the Special Committee*

Ordinarily stipulations as to time of payment are not deemed to be of the essence of a contract of sale *Mortendal* v *Smith*, 1 Q B 389, *Mersey* v *Naylor*, 9 App Cas 434, *Jamshed* v *Burjorji* 40 B 289 (P C), but see *Reuter* v *Sala*, 4 C P D 239, *Bowes* v *Shand*, 2 App Cas 455 *Robinson* v *Behar*, (1927) 1 K B 513, *Forman* v *Blackburn* (1928) 2 K B 90, *James Finlay* v *Kwick Hoo Tong*, (1929) 1 K B 400, *Hortly* v *Hymans*, (1920) 3 K B 475 But the terms of the contract may make the time of payment an essential condition *Bisop* v *Shilito*, 2 B & Ald 329n *Ebbeod* v *Blaina* (1901) 6 Com Cas 33, *Ryan* v *Ridley*, 8 Com Cas 105

Condition and warranty

12. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty

( ) A condition is a stipulation essential to the main purpose of the contract the breach of which gives rise to a right to treat the contract as repudiated

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract A stipulation may be a condition, though called a warranty in the contract

[illegible] any definition of the word 'condition The [illegible] it was drafted about four years prior to [illegible] aw as to conditions and warranties was [illegible] Since the enactment of the English Act in 1893, there have been a large number of cases on conditions and warranties We have ventured to define the expression a condition The material part of the definition consists in the use of the word 'essential, and we think that the

English decisions since 1896 bear out this view [See *Fletcher Moulton's L Js* dissenting judgment in *Wallis* v *Pratt*, (1910) 2 K B 1003 at page 1012 after wards approved by the House of Lords in 1911 A C 394] The expression

On this part of the law the Indian Act clear from the provisions of section 118 of Scottish Law which is set out in the Eng- expression 'condition was not used in the Indian Act is probably to be found in the very uncertain state of the law at that time There are many sub divisions of conditions in English Law, and one of them is a division into (1) conditions precedent and (2) concurrent conditions Concurrent conditions are the same as reciprocal conditions and they are dealt with in the Indian Act under the head 'performance of reciprocal promises' in sections 51 to 58

"Conditions are also divided into —

(1) 'Promissory conditions' and

(2) 'Contingent conditions'

'Contingent conditions are dealt with in the Indian Act under the head 'contingent contracts' in sections 31 to 36

"It may be observed that so far as the Scottish Law is concerned, it is far behind the English Law No doubt it clears many knotty points which arise in the branch of the law But it is not suited to the modern requirements of commerce Under the Scottish Law a buyer would be entitled to reject goods as on a breach of a condition in many cases in which under the English Law he would be entitled only to damages as on a breach of warranty

'The definition of warranty' in the English Act is borrowed from the notes to *Cutter* v *Powell*, 2 Sm Leading Cases, 7th Ed p 30

'As regards the definition of the term "condition' we have borrowed the word 'essential' from the classical judgment of *Williams J* in *Behn* v. *Burns*, (1863) 32 L J Q B 204 at p 206 (2)

'On referring to Indian decisions it will be found that in several cases the Courts have embarked on an enquiry whether the word 'warranty' used in some of the sections, *e g*, 118 of the Indian Act, is equivalent to condition *or* is used in the same sense as the word 'warranty' is used in English law It has been held, at least in one case (*Buch* v *Govordhandas*, 24 Bom. L R 991) that the word 'warranty' in section 118 means a 'condition' In other cases it has been held that the word 'warranty' is used in its limited sense The difficulty has arisen from the fact that the authors of the Indian Act have avoided throughout the use of the word 'condition' and have used the expression 'warranty' indiscriminately sometimes in the sense of 'condition' and sometimes in the sense of 'warranty' proper. As to section 118 of the Indian Act, it may be observed that the words 'warranty' is there used in the sense of a condition. This is clear from the contents of the section itself The section refers to unascertained goods, and provides that the buyer may reject the goods if they are not in accordance with the warranty Now the right of rejection, according to the English law, can only be exercised where the stipulation is a condition, and not where the stipulation amounts to a warranty The section then

twithstanding the breach of the 'warranty' n), accept the goods and may, by giving n from him This means that the buyer the English Act, elect to treat the breach y, and may claim compensation from the English Act "Such being the case it is 'condition' and 'warranty' observed in the

"Before concluding this note, we may draw attention to the judgment of *Lord Alverston* in *Wallis* v *Pratt*, (1911) A. C 396, where he said .—Prior to that Act there had been a very great deal of litigation and of discussion as to matters which formed only a ground of warrranty and matters which amounted to a condition, and the remedies in the one case and in the other were the *subject of a great* deal of

discussion My Lords, I thought it right to add these few words because I think it is very important to bear in mind that the rights of people in regard to these matters depend now upon statute To a large extent the old law, I will not say, has been swept away, but it has become unnecessary to refer to it'—*Report of the Special Committee*

A stipulation although termed a "warranty' may be called a "condition." *Vide Bentson* v *Taylor*, (1893) 2 Q B 281; *Wallis* v *Pratt* (1911) A C 394 (397), *Harrison* v *Knowles and Foster*, (1917) 2 K B 510, *Barker* v *Agius*, 49 T L R 751

Clause (3)—"In Sub-clause (3) we have added the words and treat the contract as repudiated' as their omission was unintentional The clause now adheres closely to the definition of the word 'warranty' in section 62 of the English Act"—*Report of the Select Committee*

When condition to be treated as warranty

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect

(3) Nothing in this section shall affect that case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise

Notes—"Having regard to the conflict which has arisen over the right of the buyer after he has accepted the goods, we have endeavoured to make it clear that once the buyer has accepted the goods, he cannot reject them on any ground If there be a breach of condition disclosed for instance on subsequent inspection of the goods he can treat the breach as a breach of warranty only and not as a breach of condition The word 'acceptance' has been explained in clauses 41 and 42 Clause 13 (1) and clause 40 of the Bill take the place of section 118 of the Indian Act Clause 13 (2) takes the place of section 117 of the Indian Act"—*Report of the* [illegible]

[illegible] benefit when he renounces [illegible] ien he abandons the remedy [illegible] express or implied *Byrne's* [illegible] intarily waive a stipulation [illegible] ct law *Halsbury*, vol 25, [illegible], *Moore & Co* v *Landaur*, (1921) 2 K B. 529

Implied undertaking as to title, etc

14 In a contract of sale, unless the circumstances of the contracts are such as to show a different intention, there is—

(*a*) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass,

(*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods,

(*c*) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made

[illegible]

a departure from t' ... this departure w ... unsettled state I ... was no implied ... liable for a bad title ...

it would seem naturally to follow that by the very act of selling the chattel the seller undertakes to transfer the property in the things, and thus warrants his title or ability to sell, and it is believed that such was the true rule of the Common Law Clause (1) of section 12 of the English Act settles the law on the point and embodies the above rule It provides that in the absence of an express provision there will be an implied condition as to title in a contract of sale Clause (2) of section 12 provides for an warranty of quiet possession and clause (3) for freedom from incumbrances These provisions are absent from the Indian Act But it appears that the laws of modern civilised countries recognise such warranties *vide Benjamin on Sale* p 694 and *Chalmers on Sale of Goods*, p 44 In our opinion, therefore the provisions of section 12 of the English Act should be adopted in India "This clause gives larger rights to the buyer than what he had under section 109 of the Indian Act In regard to the 'persons claiming under him who are allowed by section 109 to proceed against the original seller, we do not think that any specific provision is necessary Such persons will either be assignees or sub buyers from the buyer Their rights against their own seller will be governed by this section, but as against the original seller will depend on the general law'—*Report of the Special Committee*

15 Where there is a con ...

Sale by description

sample as well as by descriptior ... corresponds with the sample if the goods do not also correspond with the description.

Notes—Section 113 of the Indian Act deals with sale by description In the first place, however, the word 'denomination' used in the section is not a happy expression and is rarely used now a days Further, there is no doubt that the word 'warranty' used in the section is used in the sense of 'condition,' for where ... other words where goods ... slightest doubt that it is ... description or contract ... v *Hopkins*, 4 W & W ... e by description failure to supply the thing answering the description is not breach of warranty, but a non compliance with or non performance of the contract itself There is no reason for restricting the provisions of the section to the sale of goods which have a commercial denomination [*Bowels* v *Shand*, (1877) 2 App Cas 455] It is difficult to understand the import of the explanation to section 113 An express warranty would on general principles negative an implied warranty inconsistent with it In any case the proposition which the explanation purports to lay down seems to be in conflict with the decision of the House of Lords in *Wallis* v *Pratt*, (1911) A C 394 In our opinion section 13 of the English Act lays down comprehensively the law on the point The first part of the section which provides that the goods shall correspond with the description is as ... ch is universal (*Chalmer's Sale of Goods*, ...

... is desirable to adopt the provisions of sec ... tion 113 of the Indian Act"—*Report of* ... other description than the sample, sample may serve purpose of description *Mody* v *Gregson* 4 Eq 49, *Carter* v *Crick*, 118 R P 521

16. Subject to the provisions of this Act and of any other law for the time [illegible]

Implied conditions as to quality or fitness

of sale, except as follows —

(1) Where the buyer expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not) there is an implied condition *that the goods shall be reasonably fit for such purpose*

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith

Notes — This clause deals with implied conditions as to quality or fitness and is based on section 14 of the English Act Sub section (1) is based upon the judgment of *Cockburn C J* in *Bigge* v. *Parkinson* 31 L J Exch 301 In that case the learned Chief Justice said as follows —

"When a buyer buys a specific article, the rule Caveat Emptor applies but where the buyer orders goods to be supplied and trusts to the judgment of the seller to select the goods which shall be applicable for the purpose for which they are intended, which is known to both the parties though there is no express stipulation that they shall be fit for the purpose there is an implied warranty that they are fit for that purpose There is no reason why such a warranty should not be implied in the case of a 'sale of provisions'

Section 114 of the Indian Act is based on this principle But the provisions of that section appear to have a narrower scope than clause (1) of section 14 of the English Act which has been followed in drafting the present clause

'Sub section (1) also makes it clear that it is immaterial whether the seller is a manufacturer or producer or not Thus it clears up the doubt which was raised by the decision in *Parkinson* v *Lee*, (1802) 2 East 314 In that case it was held that the seller who was not a manufacturer was not liable for a latent defect But this decision is no longer good law [*vide Chalmers on Sales* of *Goods* p 54 and *Pollock and Mulla's Contract Act* p 540 f n (2)] The proviso to sub-section (1) enacts the provisions in section 115 of the Indian Act

'The proposition stated in sub section (2) has been well established in England (*Jones* v *Just* 1868 L R 34 Q B 197) and has been recognised also in India in two cases from Madras in which it was held that where goods were sold by description there was an implied warranty that the goods should be of [illegible] *Palloorain* (1918) 35 M L J 180 and [illegible] I L J 208] As regards what is [illegible] v *Fiat Motors*, (1910) 2 K B 831, [illegible] B 937, *Summer* v *Webb*, (1922) 1 K B 55

' For the purpose of the proviso under clause (2) it is not necessary that a full examination should be made *Thornets* v *Beer*, (1919) 1 K B 486

' Sub-section (3) re enacts the provisions *of section 110 of the Indian Act In* regard to section 111 of the Indian Act it may be observed that the trend of recent

decision does not recognise any distinction between provisions and other goods [*Emerton* v *Mathews*, (1862) L J Ex 139, *Smith* v *Baker*, (1878) 40 L T N S 261 See also *Walle's* v *Runell*, (1902) 2 Ir R 585 at 611] There is therefore, no reason to retain the provisions in section 111 of the Indian Act —*Report of the Special Committee*

17 (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect

Sale by sample

(2) In the case of a contract for sale by sample there is an implied condition—

(*a*) that the bulk shall correspond with the sample in quality,

(*b*) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample,

(*c*) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample

Notes—This clause relates to sale by sample Although old text writers were inclined to the view that the term that 'bulk shall correspond with sample', is a ... entitled to ... *Palmer*, ... this so ... *Sale* p 936) The buyer is also entitled to have reasonable facilities for inspecting the bulk independently of any local or trade usage to that effect [*Lorymer* v *Smith* (1822) B & C ... a defect not discernible ... in the bulk would ... from it [*Hilbut* ... section 15 of the English Act Section 112 of the Indian Act refers only to the right of the ... The ... efore has ... *ial Com- mittee*, see also 21 Ind Cas 573

CHAPTER III

Effects of the Contract

Transfer of property as between seller and buyer.

18 Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained

Goods must be ascertained

Notes—"This clause follows section 16 of the English Act It provides that ... Sections 79 ... up one another, ... *ittee*, see also ... 3 Where the ... omise to sell ... otwithstanding ... of the port on so to be taken is unascertained *Halsbury's Laws of England*, 1st Ed p 123, *Rhode* v *Thwaites* B & C 388, *Burk* v *Devis*, 2 M & S 367, *Snell* v *Heighton*, Cab & El 95, *Pletts* v *Campbell*, (1895) 2 Q B 299 But goods do not pass by mere ascertainment of the goods Such goods pass after ascertainment, if the parties so agree *Wait* v *Baker*, 2 Exch 1, *Campbell* v *Mersey Docks* 14 C B (N S) 412 (415) In particular, where the individuality of ... counted ... tainment, ... *Laws of* ... n 9 Ad ... I 687

Wallace v *Breeds*, 13 East 522; *White* v *Wilks*, 5 Taunt 176; *Shepley* v *Devis*, 5 Taunt 617, *Boswell* v *Kilborn*, 15 Moo P C 309

Property passes when intended to pass

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case

(3) Unless a different intention appears, the rules contained in section 20 to 24 are rules for ascertaining that intention of the parties as to the time at which the property in the goods is to pass to the buyer

Notes—Section 19 (1) and (2) follows section 17 of the English Act while clause 19 (3) and clauses 20 to 24 follow section 18 Section 19 is based on the principle of the English Law that the property may pass by the contract itself, if such be the intention of the parties (*Chalmer's Sale of Goods*, p 81) On this point there appears to be conflict of opinion in Indian Courts Dealing with a

learned Chief Justice held that section 78 of the Indian Act laid down a rule which the parties could not by their arrangement vary In a recent case the Bombay High Court was of opinion that *Maclean C J's* view in the above case was unsound (*Amies* v *Jal*, 25 Bom L R 778), This conflict is due to the rigid terms of section 78 which fails to state that its provisions will be subject to the intention of the parties

"Section 78 provides that when an offer and acceptance have taken place the property in the thing does not pass until any one of the following conditions have

ent of the price, or

r the postponement of delivery or

"It is, however, clear that neither the payment of the price nor the delivery either in whole or in part is necessary for the completion of a sale Section 89 of the Indian

to postpone payment or
arnest or delivery (p 316
ding of the last paragraph
to be inferred (p 449)
definite.

"The passing or transfer of property constitutes the most important element in the law relating to contracts for the sale of goods In mercantile contracts the certainty of the rule is often of the more importance than the substance of the rule [*Lockyer* v *Offey*, 1 J R 259] In our opinion it is desirable to follow the clear and

not pass to the purchasers and a suit by the sellers for recovery of the price of the goods does not lie A I R 1931 Lah 260

Clause (3) —' The parties, no doubt, may make any bargain they like and the law will give effect to it When the parties express their intention clearly no diffi

at a future time or
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meet such cases the

Courts have worked out a series of definite rules for determining when the property is to be deemed to pass according to the imputed intention of the parties These rules have been reproduced in section 18 of the English Act (*Chalmers on Sale of Goods*, pp 9 and 10) and they have been adopted in clauses 20 to 24 Section 19 (3) states the general propositions, that, unless a different intention appears the property passes in accordance with rules mentioned in section 20 or 24 —*Report of the Special Committee*

20 Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both is postponed

Specific goods in a deliverable state

Notes.—This section makes it clear that in the case of an unconditional contract

11 App Cas 370

21 Where there is an unconditional contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof

Specific goods to be put into a deliverable state

Notes —The section following rule 3 in section 18 of the English Act provides that the property does not pass unless the goods are put in a deliverable state The same principle is laid down in section 80 of the Indian Act -*Report of the Special Committee* But this rule is not applicable where no such act is required or obligatory on the seller, as where the act is done merely for the satisfaction of the buyer (*Swanwick* v *Sothern*, 9 Ad & El 895) or where the buyer is to do the act (*Ruggmintt*), 11 East 210; *Turley* v *Bates*, 2 H & C 200) But if the seller is to do the act it cannot be done by the buyer without the consent of the seller *Acraman* v *Morrice*, 8 C B 449, *Halsbury*, vol 25, p. 175

Something —Means some act done directly to the goods, *vide Anderson* v. *Morice*, L R 10 C P 609; Ex Ch p 177

The fact that the seller is to pay warehouse or wharfage rent for the goods does not suspend the passing of the property *Hammond* v *Henderson* 1 Bos & P N R 69, *Greaves* v *Hepke*, 2 B & Ald 131, *Halsbury* p 176, see also *Kersell* v *Timber Operators* (1927) 1 K B 298

22 Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done, and the buyer has notice thereof

Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain the price

Notes —Section 22 embodies rule 4 in section 18 of the English Act and

also 4 C 801, 20 C W N 1224=44 C 98, *Gillet* v *Hill*, 2 Cr & M 530, *Swanwick* v *Sothern*, 9 Ad & Ll 895, *R* v *Tideswell* (1905) 2 K B 273, *Sharp* v *Christmas* 8 T L R 687 C A, *Wallace* v *Breeds* 13 East 522, *White* v *Wilks*, 5 Taunt 176, *Sheeply* v *Davis*, 5 Taunt 617 *Boswell* v *Kilborn* 15 Moo P C C 309, *Jenkyns* v *Usborne* 7 M & G 678, *Nanki Bruce* v *Commonwealth Trust* (1926) A C 77

Sale of unascertained goods and appropriation

23 (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer Such assent may be express or implied, and may be given either before or after the appropriation is made

Delivery to carrier

(2) Where, in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or,) not for the purpose of transmission to the buyer and does not reserve the right of disposal he is deemed to have unconditionally appropriated the goods to the contract

Notes — Section 23 (1) fol[illegible]

[illegible] into an actual sale and the [illegible] 13 57 Ind Cas 140=47 C [illegible] 1140=70 Ind Cas 138, 9 [illegible] Cas 582, 29 C W N 808, [illegible]

Goods sent on approval or 'on sale or return

24 When goods are delivered to the buyer on approval or on sale or return" or other similar terms, the property therein passes to the buyer—

(*a*) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction,

(*b*) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection then if a time has been fixed for the return of the goods on the expiration of such time and if no time has been fixed on the expiration of a reasonable time

Notes —Section 24 relates to sale on approval and what is called in England Sale or return Rule 24 of section 18 of the English Act relates to that subject when goods are sent on approval, the accepted rule is that there is not generally a completed sale until the buyer has—

(*a*) signified his approval which may be either expressly or by dealing with the goods as owner, or

(*b*) kept goods until the lapse of the prescribed or a reasonable time without giving notice of rejection

(*c*) made return impossible by his own act or default as by letting the goods to be destoyed or spoilt (*Pollock* and *Mulla's Contract Act*, p 452) The above rule has been embodied [illegible] English Act and we propose to follow the principle has been referred to in illus[illegible]ch an important principle should not be embodied in a specific clause We also propose to omit section 85 of the Indian Act The rule stated there is a rule of intention and depends on the question whether the contract is severable or non severable (*Halsbury's Laws of England* vol 25 p 175)

Reservation of right of disposal

25 (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract the seller may, by the terms of the contract or appropriation reserve the right of disposal of the goods until certain conditions are fulfilled In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer the property in the goods does not pass to buyer until the conditions imposed by the seller are fulfilled

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal

( ) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and the bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him

... rrier is based on rule (2) of section ... recognized in Indian Law (see *Pollock* and *Mulla's Contract Act*, pp 472 473 ... *ord Automobiles Co v Delhi Motor Co*, 24 Bom L R 1146)—*Report of the Special Committee*

Risk *prima facie* passes with property

26 Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer s risk whether delivery has been made or not

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party

Notes —'Section 26 of the Indian Act ... law that the risk follows the property ... it is merely a *prima facie* rule There is ... the risk ... s a bailee ... nglish Act

Transfer of title

Sale by person not the owner

27 Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell .

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course ofbusiness of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell

Notes—'In England before the passing of the first three Factors Acts, being the Acts of 1823, 1825 and 1842, a person in possession of goods or documents of title could not dispose of these goods in contravention of his instructions with respect to them except where—

(1) The sale was in the market overt,

(2) The owner of the goods was by his conduct precluded from denying the seller's authority to sell, and

age
jou
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of the Acts, he said —

'We do not think that the legislature wished to give to all sales and:pledges in the ordinary course of business the effect which the common law gives to sales in market overt The general rule of law is that where a person is deceived by another into believing he may safely deal with property, he bears the loss, unless he can show that he was misled by the act of the owner The legislature seems to us to have wished to make
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'It will thus be seen that the provisions of the Factors Act referred to above were really an extension of the common law rule of estoppel

Under these Acts, the terms used were simply 'person' or 'agent' entrusted with the possession of goods but it was held that the Acts only applied to mercantile transactions, and that the term 'person' or 'agent' did not include a mere servant or one who had possession of goods for carriage, safe custody, or otherwise as an

then in force in India two
Indian Factors Act of 1840
and 1825 The Indian Factors
Act of 1842 Both the Indian
relate only to pledges The Acts contained no power of sale'

As regards sales
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good deal of controversy,
in section 108 of the Indian Act

'As to pledges by an apparent owner, the clause as drafted by them ran as follows —

'A person who is in possession of goods or of any bill of lading, dock warrant, ware house keeper's certificate warrant for order for delivery, or any other document

of title to goods may make a val d pledge of such goods or documents, provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawner is acting improperly

'This clause was retained by the Select Committee and it became subsequently section 78 of the Indian Act

Referring to the above clauses *Sir Henry Maine* observed as follows —

'It cannot be denied that the subject is difficult We have to consider on one hand, the h his right to recover wha reater weight appears to would suffer, were he to ly chargeable with rem ssness or negligence in the custody of the property The conduct of the latter has been blameless The balance of equitable consideration is, therefore, on the side of a rule favourable to the purchaser and we think that sound pol cy with respect to the interests of commerce points to the same conclusion

'We have therefore, provided that the ownership of goods may be acquired by buying them from any person who is in possession of them, if the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them Similar provisions have been inserted in accordance, we may observe, with the sp rit of the Factors Act—to meet the cases of those who have purchased goods or taken them by way of pledge from persons in possession of any documentary title to the goods, where the circumstances are not such as to raise a reasonable presumption that the person in possession of the document has no right to sell or to pledge the goods

'It is clear from the above observations that the intention was that a buyer should acquire a good title to goods if he bought them from 'any person who was in possession of them if he acted in good faith Though that was the intention of the Legislature, the Indian Courts have in some cases construed the word 'possession both in sections 108 and 178 of the Indian Act to mean 'juridical possession In other cases however, it has been held that the word 'possession is used in its literal meaning and that there is no warrant for qualifying it (See *Haji Rahimbox* v *Central Bank*, I L R 56 C 367 where all the cases on the point are reviewed) The general trend however, of the decisions is to confine the operation of both the sections to juridical possession as to sales or pleo agents like fact both of sales ar attempted to d provis ons of Section 1 of having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods or to raise money ntile agent to sell, of which he is in buyer a good t tle

'In section 27 we have In confining this power to me line with the English law law But the law of mar portance having regard to such sales by subsequent overt should be extended to this country

"We have specifically stated in the clause that a person buying goods from one who is not the owner thereof and who does not sell them with his consent acqu res no better title to the goods than the seller had except in the two cases mentioned therein, mercant le age goo the Sec thereof under a voidable contract The suggest ons received on these two subjects may be divided into three clauses

"(1) The English law relating to sale in market overt should be introduced in British India, as it will relieve merchants of their anxiety when dealing with goods, especially in case of jewellery, ornaments, etc

"(2) The words at the end of clause 29 relating to offences should be deleted

"(3) A sale in a shop during business hours by the shop keeper or his servant should pass a valid title to a *bona fide* purchaser for value

"... ated in *Benjamin on*

... valid sale of goods ... le in market overt ...

or prescription on special days, but in the city of London every day except Sunday is a market day In the country the only place, that is market overt is the particular spot of ground set apart by custom for the sale of particular goods, and this does not include shops, but in the City of London every shop in which goods are exposed publicly for sale is market overt for such goods as the owner openly professes to trade in Market overt is 'an open' public and legally constituted market The shop in London must be one in which goods are openly sold, that is, sold in the presence and sight of any one entering the shop

"In London this custom is confined to shops in the city, it does not extend to the whole of the metropolitan area It does nor protect a sale in a shop outside in the City bounds, *e g*, in Regent Street, nor a sale in a place within the City bounds which is not a shop, *e g*, a public auction room (See *Clayton v Le Roy*, (1911) 2 K B 1031—*Report of the Select Committee*

28 If one of several joint owners of goods has the sole possession of them by permission of the co owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell

Sale by one of joint owners

Notes—This is clause (2) of section 108 of the Indian Contract Act with certain alterations Ordinarily a sale by a co owner makes the buyer a joint owner with the other co owner (See also 11 B L R 193, *Nyburg v Handellar*, (1892) 2 Q B 202 But when the condition laid down in this section are satisfied the buyer acquires exclusive ownership of the thing sold

29 When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872,* but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller s defect of title

Sale by person in possession under voidable contract

Notes—This section enacts the provision of the exception 3 of the repealed section 108 of the Contract Act, on the lines of section 23 of the English Sale of Goods Act, 1923

"It is quite clear that when a vendee obtains possession of a chattel with the intention by the vendor to transfer both the property and possession, although the vendee has committed a false and fraudulent misrepresentation in order to effect the contract or obtain the possession, the property vests in the vendee until the vendor has done some act to disaffirm ...
if before the disaffirmance the f...
a partial interest in the chattel t...
to good against the vendor *Kin*...
(1895) 5 Q B 521, *Oppenheime*...
is a *defacto* contract to transfer ...
ground of coer...
and 19 A of the ...
Merry, supra ...
he does not a ...

* Act IX of 1872

in the things sold *Clough* v *London and North Western Railway,* L R 7 Ex 26, see also 3 C 379, 7 M H C R 233, 25 B 702

On this section the report of the Select Committee runs as follows —

The second suggestion is that the words at the end of clause 29 relating to offences should be deleted The present law on the subject is contained in exception 3 of section 108 of the Indian Contract Act, 1872, which is as follows —

'When a person has obtained possession of goods under a contract voidable at the option of the other party thereto the ownership of the goods is transferred to a third person who, before the contract is rescinded buys them in good faith of the person in possession, unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents

"T ... ply unless there is ... contract and the ... is obtained them ... the nature of the transaction If the nature of the fraud be such that there never was a contract between the parties (as for instance if A obtains goods from S by falsely pretending to be X's agent, though buying on his own account) then the person who so obtains the goods has no title and can give none

... A buys goods from ... purporting to be ... at X was a fictiti ... affirm or rescind ... ere is "a contract ... was procured by A by cheating B, and cheating is an offence under section 415 of the Indian Penal Code The contract having been procured by an offence the property in the goods ...

"The first condition necessary for the application of section 29 as now drafted is that there must be a contract It is clear that there can be no contract where goods have been obtained by theft as defined in section 378 of the Indian Penal Code, or ... Section 29 as drafted by us ... charge made by clause 29 in the ... from a person who has obtained ... cquires a good title to the goods ... to cheating

'The third suggestion is that a sale in a shop during business hours by a shop keeper or his servant should pass a valid title to a *bona fide* purchaser for value This goes far beyond anything known in English law and even beyond the law as to sales in market overt It is impossible to accede to such a suggestion' —*Report of the Select Committee*

Seller or buyer in possession after sale

30 (1) Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same

(2) Where a person having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other

disposition ... nd without notice of ... the goods shall have

Notes—"This section is new It provides for the case of a sale by a seller who is in possession of goods sold by him It is a reproduction of section 25 sub ... ased to a large extent on section ... enactment of section 8 of the Eng- ... yer, for his own convenience, left the ... seller who fraudulently resold or ... e goods from the innocent purchaser ... s enacted to remove the hardship ... sub clause (2) provides for the case of a sale by a buyer obtaining possession of goods with the consent of the seller, ... s a reproduction of section 25 sub- ... ased to a large extent on section 9 ... enactment of section 9 of the English ... of goods or documents of title to goods ... rights, the reason given being that the buyer was not entrusted with the goods as an agent Section 9 of the English factors Act was enacted to remove the hardship caused by the common law rule ... goods' in ... avoid a ... he buyer in person shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner Instead of those words we have substituted to avoid the ...

Committee

"We have amended clause 30 by adding, in two places the words 'or by a mercantile agent acting for him' This has rendered it necessary to define the expression 'mercantile agent' and we have defined it accordingly in the definition clause We have used this term also in clause 27 of the Bill and in clause 2 of the Indian Contract (Amendment) Bill—*Report of the Select Committee*

CHAPTER IV

Performance of the Contract

31 It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale

Duties of seller and buyer

Notes—'This clause is based on section 27 of the English Act Although there is no specific section corresponding to it in the Indian Act it is implied in section 51 We think a separate section is desirable—*Report of the Special Committee* The liability to pay *prima facie* arises only when the property has passed *Laird v Pim* 7 M & W. 474 As to buyer's liability to pay the price to a third person by agreement, see *Kenworth Sons & Co. v. Redtway & Co*, 9 Com Cas 992 C A *Halsbury*, vol 25, p 204 As regards sale of goods on credit, *vide Staunton v Wood*, (1851) 16 Q B 638

Payment and delivery are concurrent conditions

32 Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods

Notes —The general rule is that the obligation of the seller to deliver and that of the buyer to pay are implied concurrent conditions in the nature of mutual conditions precedent, and that neither can enforce the contract against the other without ... nd willingness ... words 'unless ... f contracts ... been adopted ... Indian Act —

Concurrent condition —Because delivery and payment are to be made at the same time, so neither is a condition precedent to the other. All that is necessary is that the parties concur in the joint act *Pordage* v *Cole*, 1 Wins Sand 1871, 551 *Rawson* v *Jonson*, 1 East 203 The words "ready and willing" imply not only the disposition, but the capacity to do the act. *De Medina* v *Norman*, (1842) 9 M & W 890, *Lawrence* v *Knowles*, 5 Bing N C 399; *Measures* v *Measures*, (1910) 2 Ch 248 C A *Halsbury*, vol 25, p 205

Delivery

33 Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Notes —This clause provides for the manner in which delivery of goods can be made and corresponds to section 90 of 'the Indian Act The words 'which the parties agree shall be treated as delivery" have been added to make it clear that delivery may also be made by means of an act or thing which the parties agree shall be treated as delivery *Halsbury's Laws of England*, Vol 25, p. 206

As to what operates as delivery, *vide Atkins* v *Maling*, 2 Term Rep 462, *Goodal* v *Skelton*, 2 H, Bl 316, *Proctor* v *Jones*, 1 C & P 532; *Simmons* v *Swift*, 5 B & C 857, *Dixon* v *Yates*, 5 B & Ad 313, *Behrend & Co* v *Produce Brokers*, (1920) 3 K B 530, *Galbraith* v *Grant and Block*, (1922) 2 K B 155, *Hilton* v. *Tucker*, 39 Ch D 669

Effect of part delivery

34 A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of a part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder

Notes —"This section repeats the provisions of section 92 of the Indian Act It affirms the English common law rule that the delivery of the part may be a delivery of the whole if it is so intended and agreed, but not otherwise (*Pollock and Mulla's Contract Act* p 489)

Buyer to apply for delivery

35 Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Notes —' In this section the provisions of section 93 of the Indian Act are repeated" It is true that there is no specific provision in the English Act corresponding to it ... has been held ... carry the ... that the ... *Chalmers* ... *Halsbury's* ... of opinion ... ntract or

in the absence of any contract to the contrary should be substituted for the expression apart from any express contract', and clauses 5, 36 (1) and 62 of the Bill were referred to We have, however, retained the expression 'apart from any express contract' as the rule enunciated in clause 35 has been in existence since 1872 and has been adopted in actual practice —*Report of the Special Committee*

36 (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or emplied, between the parties Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced

Rules as to delivery

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour What is a reasonable hour is a question of fact

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

... ction 29 of the English Act and the second part of section 29 (1) of ... provisions of section 94 of the Indian ... the word 'produced in sub clause (2) ...

Committee

37 (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered shall pay for them at the contract rate

Delivery of wrong quantity

(2) Where the seller delivers to the buyer a quantity of goods larger than *he contracted to sell, the buyer may accept the goods included in the contract* and reject the rest, or he may reject the whole If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties

Notes —Section 119 of the Indian Act provides one of the contingencies with regard to the quantity of the goods Sect ... and deals with all possible contingencies ... fore, adopted the provisions of the English ... In the case of delivery of less quantity of ... every contract for a quantity of goods ...

quantity *Mercey Steel & Iron* v *Walor Benzon & Co*, 9 App Cas 434, *Baldey* v *Parker*, 2 B & C 37; *Bigg* v *Whisking*, 14 C B 195; *Halsbury*, vol 25, p 212 So if the seller either sends more or less than is ordered, there has been no complete [illegible]

ham's Contract, p 340 But where he accepts he is not allowed to reject it on the ground of large quantity A I R 1927 Mad 62 Again by usage of trade, a [illegible]

25, p 215

Clause (3)—*Vide Levy* v *Green*, 1 E & E 959 Ex Ch 974

Instalment delivery

38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments

[illegible]

neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case, depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Notes—The cases of instalment delivery fall under the general provisions embodied in sections 39 and 120 of the Indian Act As a corollary to the preceding [illegible]

root of the contract. (*Whithers* v *Reynolds*, (1831) 2 B & Ad 882, *Hoor* v *Rannie*, 29 L J Ex 79, *Honek* v *Muller*, (1881) 7 Q B D 92] The latter view was [illegible] (1914) [illegible] uld be [illegible] section [illegible] oes not [illegible] opinion the rule ought to apply where the seller omits or refuses to make a delivery We have, therefore, inserted the words 'no delivery or' after the words 'the seller makes' in sub-clause (2)"—*Report of the Special Committee*

Delivery to carrier or wharfinger

39 (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable

having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course [illegible]

[illegible]

buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit

Notes —'This clause is a combination of section 32 of the English Act and section 91 of the Indian Act In England it has been well settled for more than a century 'that if a tradesman [illegible]
name any carrier, the mon [illegible]
a delivery to the purchaser' [illegible]
manson, 3 B & P 582) [illegible]
whatever was necessary to [illegible]

[illegible]

to a wharfinger In England there are special statutory provisions relating to wharfingers As the rule as to wharfingers in section 92 has been in existence since 1872 in India, we consider it desirable to [illegible]
England there has been some difference [illegible]
section 32 (3) of f o b contracts *Balla* [illegible]
K B 279 and *Hamilton L. J* in (1913) [illegible]
view of the use of the [illegible]
contracts As in f o b [illegible]
the ship and thereafter [illegible]
tioned above are of opinic [illegible]
32 (3) This view was [illegible]
Appeal [see observations [illegible]
p 750-53] The majorit [illegible]
Northern Steel Co v *Jo* [illegible]
not been finally decided by a higher tribunal, we think it is desirable to retain the word 'sent' in sub-clause (3)'—*Report of the Special Committee*

40 Where the seller of goods agrees to deliver them at his risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless, otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit

Risk where goods are delivered at distant place

Notes —"This section is based on section 33 of the English Act It was pointed out in the c [illegible]
difficult to [illegible]
on the selle [illegible]
cular purp [illegible]

[illegible]

41. (1) Where goods are delivered to the buyer which he has not previously examined he is not deemed to have accepted them unless and until he has had a reasonable

Buyer's right of examining the goods

opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract

(2) Unless otherwise agreed when the seller tenders delivery of goods to the buyer, he is bound on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract

Notes—'This clause is based on section 34 of the English Act The rules stated in both the clauses are common law rules (*Benjamin on Sale* pp 842 and 856) Sub clause (1) enacts the well established propos tion that no acceptance can properly be said to have taken place until the buyer has had an opportunity of rejection

"The rule stated in sub clause (2) is a corollary to the above rule and was appl ed in *Isherwood* v *Whitmore* 11 M & W 347 In that case the defendants, having received notice that the goods were at a certain wharf ready for delivery on payment of the price, went there, but on appl c ... closed casks said to contain them It ... given to the buyer to examine the goods ... valid offer of delivery Although there is ... laying down the rule, the principle underlying it has been embodied in section 38 (2) of that Act The rule has also been applied by *Latham, J* in a Bombay case in *Ruttensey* v *Jamnadas*, I L R 6 Bom 692 The words unless otherwise agreed save special contracts'—*Report of the Special Committee*

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them

Acceptance

Notes.—This section is based on section 35 of the Engl sh Act and embodies the common law rule on this point—*Report of the Special Committee* The question whether the buyer has accepted the goods only arises where the buyer has a right to reject [*Perkins* v *Bell* (1893) 1 Q B 193, *Varby* v *Whipp*, (1900) 1 Q B 513] Notice of acceptance may be given by words of mouth or it may be in writing *Abbott* v *Wolsey*, (1895) 2 Q B 97 C A, see also *Saunders* v *Topp*, 4 Exch 390 As regards what acts are inconsistent with ownership of the seller *vide Parker* v *Palmer*, 4 B & Ald 387, *Parker* v. *Wallis*, 5 E & B 21, *Chapman* v *Morton*, 11 M & W 534, *Wallis* v *Pratt*, (1911) A C 394 Delay in rejection and payment of the price gives rise to the presumption of acceptance *Morrison* v *Clarkson* 25 R (Ct of Sess) 427, see also A I R 1930 Lah 52 The time may be provided for by the contract [*Sharp* v *Great Western Rail Co*, (1881) 9 M & W 7] or may be implied by trade usage (*Sanders* v *Jameson*, 2 Car & K 557) *Halsbury*, vol 25 p 400

43 Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller but it is sufficient if he intimates to the seller that he refuses to accept them

Buyer not bound to return rejected goods

44 When the seller is ready and willing to deliver the goods and requests the buyer to ... not within a ... take delivery ... seller for any ... refusal to take delivery, and also for a reasonable charge for the care and custody of the goods

Liability of buyer for neglecting or refusing delivery of goods

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract

Notes—This clause is based on section 37 of the English Act There is no specific provision in the Indian Act on the point, but the rule is based on the remarks of *Lord Ellenborough* in *Greavey* v *Ashlin*, (1873) 3 Camp 426 and is a salutary rule of law The reference to the charge for custody shows that the clause applies to cases in which the property has passed and the buyer neglects to take possession The proviso to the section saves all the rights of the seller which he is entitled to enforce in case of the repudiation of the contract on the part of the buyer —*Report of the Special Committee*, see also *Somes* v *British Empire Shipping Co*, 8 H L Cas 338, *Hartley* v *Hitchcock*, 1 Stark 408, *Pignataro* v *Gilroy*, (1919) 1 K B 459

Proviso—The saving of ... difficulties of construction, a ... delivery within a reasonable ti ... whereas it should be so as ... law *Howe* v *Smith* 27 Ch I ... vol 25, p 23

CHAPTER V.

Rights of unpaid seller against the goods

"Unpaid seller" defined

45 (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

(*a*) when the whole of the price has not been paid or tendered,

(*b*) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrumnnt or otherwise

(2) In this Chapter, the term "seller' includes any person who is in the position of a seller, as for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for the price

Notes—This clause defines an unpaid seller and is based on section 38 of the English Act There is no similar provision in the Indian Act One of the rights of an unpaid seller is dealt with in section 95 We think it desirable to define an unpaid seller

... ghts of an ... shown to be ... *ods*, p 102)

46 (1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods as such has by implication of law—

Unpaid seller's rights

(*a*) a lien on the goods for the price while he is in possession of them;

(*b*) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(*c*) a right of re sale as limited by this Act

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co extensive with his rights of lien and stoppage in transit where the property has passed to the buyer

Notes—"This clause which is based on section 39 of the English Act declares generally the rights of an unpaid seller When the property in the goods has passed to the buyer, he has the following rights —

(1) lien,

(2) stoppage in transit,

(3) right of re sale

This clause groups together in a convenient form the rights of an unpaid seller which are scattered over different sections in the Indian Act Lien is provided for in sections 95 to 98, stoppage in transit in sections 100 to 106 and re sale in sect on 107

Sub clause (2) refers to other rights of an unpaid seller where the property has not passed to the buyer"—*Report of the Special Committee*

Unpaid seller's lien

Seller s lien

47 (1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely —

(*a*) where the goods have been sold without any stipulation as to credit,

(*b*) where the goods have been sold on credit, but the term of credit has expired,

(*c*) where the buyer becomes insolvent

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer

[illegible] ates learly

possession of the goods as an agent or [illegible] arises in cases when the buyer becomes insolvent allowing the goods to remain in possession of the seller There is no reported decision of any Indian Court on this point The old common law rule was that though the goods may remain in possession of the seller, yet if it is agreed between the seller and the buyer that the former s possession shall thenceforth be that of a bailee for the buyer, and not that [illegible] *Robinson* (1861) 30 L J Q B 261 at [illegible] v *Crump*, [illegible] section 41 [illegible] ed in that sub section

We do not think it desirable to make any provision relating to equitable titles and have therefore left the matter to be dealt with under the ordinary law of the land"—*Report of the Special Committee*

Part delivery

48 Where an unpaid seller has made part delivery of the goods he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien

Notes —This section follow [illegible] The pr nc ple is to be found in the illustration to se[illegible] *Committee* For English cases [illegible] *Bunney* v *Poynts*, 4 B & A [illegible] *Yates* 5 B & Ad 313, *Re MacLaren, Exparte Cooper*, 11 C [illegible] fact that the goods are in the seller s own possess on is important to show that a part delivery is not intended as a complete delivery *Miles* v *Gorton* 2 Cr & M 504 (510)

Termination of lien

49 (1) The unpaid seller of goods loses his lien thereon—

(*a*) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods,

(*b*) when the buyer or his agent lawfully obtains possession of the goods,

(*c*) by waiver thereof

(2) The unpaid seller of goods having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods

terminates We consider that these Sub clause (3) of the present clause which is based on section 43 (2) of the English Act recognises the principle in the following cases, *viz —Houldītch* v. *Desarges*, (1818) 2 Stark 337 *Scrivener* v *Great N W Railway*, 19 W R 338 (Eng)'—*Report of the Special Committee* A It is waived by implication which are inconsistent with 25, p 246, citing *Re Leith's achlan*, 23 Ch D 330, *Bank of Africa* v *Salisbury*, (1892) A C 281 P C

Stoppage in transit.

Right of stoppage in transit

50. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Notes —"This section follows section 44 of the English Act The principle is recognised in sections 99-106 of the Indian Act' —*Report of the Select Committee*

Insolvent.—Mere temporary financial embarrassment cannot be treated as insolvency *Re Phœnix Bessmer*, 4 Ch D 108

Duration of transit

51 (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee

(2) If the buyer or his agent in that behalf obtains delivery of the goods an end tination, the carrier he holds the goods for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed te be at an end

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods

Notes —"This section is based on section 45 of the English Act The same principle is embodied in section 100 of the Indian Act, but we prefer to adopt the provisions of the English section —*Report of the Select Committee*

How stoppage in transit is effected

52 (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are Such notice may be given either to the person in actual possession of

the goods or to his principal In the latter case the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of the seller The expenses of such re delivery shall be borne by the seller

Notes — 'This section is based on section 46 of the English Act The rule contained in that section corresponds to section 104 and 105 of the Indian Act "—*Report of the Special Committee*

Transfer by buyer and seller

53 (1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto

Effect of sub sale or pledge by buyer

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller s right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee

Where the transfer is by way of pledge, the unpaid seller may require the ... the first instance, ... buyer in the hands

Notes —' This clause is based on section 47 of the English Act It relates to the effect of a sub sale or a pledge of the goods sold by a buyer before he has paid the price The first paragraph of sub clause (1) combines the provis ons of sections 98 and 101 of the Indian Act, sections 102 and 103 of the Indian Act refer to the transfer of a document of title by the buyer That provision is contained in the *proviso* to sub-clause (1) The words 'having obtained' in section 102 of the Indian Act are not satisfactory They may include the ... tortuously To exclude such cases ... transferred' The controversy with ... of title' has been now set at rest by ... *Chand*, I L R 43 I A 164 They ... Act of 1840 and include any inst... warrants and orders for the delive... ferred, we have inserted the word, ...

"In sub-clause (2) we have inserted a provision to provide for the right of marshalling by an unpaid seller when the buyer ... of the documents of title. In such case ... pledgee to satisfy his claim against the ... the hands of th... ...plies to transactio... relating to immo... Transfer of Property Act) and is also ... to contracts for the sale of goods [... *ale*, p 1059]—*Report of the Special Committee*

54 (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit

Sale not generally rescinded by lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the

buyer of his intention to re sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re sell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re sale If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re sale

(3) Where an unpaid seller who has exercised his right of lien or stoppage

(4) Where the seller expressly reserves a right of re sale in case the buyer should make default, and on the buyer making default, re sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages

right of re sale of an unpaid seller, and is

In drafting the clause we have been guided

right of re sale, he should give notice to the

(2) In default of such a notice the seller should have no right to claim any damages for loss or re sale from the buyer and should be under an obligation to pay over the profits if any, arising from the re sale to the purchaser

(3) Whether or not the requisite notice is given, the purchaser from a seller should get an absolute and clear title This position underlies section 48, clause (2) of the English Act but the point is made clear in the Bill In regard to the profits arising from the re sale, we have thought it right that the seller should be entitled to the profits in as much as the re sale is a result of a breach of contract on the part of the buyer We have not overlooked the fact that this point is treated as doubtful in English Law We have not attempted to define the word 'perishable because the English decisions and text books make it clear what that word means *Vide Halsbury*, vol 25 p 264, *Benjamin on Sale* p 1085 —*Report of the Special Committee*

The unpaid vendor is entitled to the loss sustained by him inclusive of all out of pocket expenses in effecting the re sale but not to a re sale commission in respect of goods sold by him as his own The result is the same even where the property had passed but goods had not been parted with by the vendor 129 Ind Cas 912= A I R 1931 Sind 32

CHAPTER VI

SUITS FOR BREACH OF THE CONTRACT

Suit for price

55 (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract

Notes —"This section is based on section 49 (1) and (2) of the English Act The provision in sub clause (3) of section 49 of the English Act dealing with interest had been included in clause 61 of the Bill—*Report of the Select Committee*

Damages for non acceptance

56 Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non acceptance

Notes —' This section is based on section 50 of the English Act We have omitted in this and the other clauses (57 and 59) the provisions of the English Act

relating to the measure of damages as they are provided for in sections 73 and 74 of the Indian Act —*Report of the Special Committee*

57 Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non delivery

Damages for non delivery

58 Subject to the provisions of Chapter II of the Specific Relief Act, 1877,* in any suit for breach of contract to deliver specific or ascertained goods, the Court may if it thinks fit on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise as the Court may deem just, and the application of the plaintiff may be made at any time before the decree

Specific performance

Notes —"This section is based on section 52 of the English Act We have [illegible]

59 (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach *of a condition on the part of the seller as a breach* of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods, but he may—

Remedy for breach of warranty

(*a*) set up against the seller the breach of warranty in diminution or extinction of the price, or

(*b*) sue the seller for damages for breach of warranty

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage

Notes —"In this section the distinction between 'condition' and 'warranty' has been maintained —*Report of the Special Committee*

60 Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach

Repudiation of contract before due date

Notes —"This section is new and deals with what is known as anticipatory breach The remedies on an anticipatory breach have been recognised for a long time in [illegible] [See [illegible] P*tterson*, (1891) 129 R R 483, [illegible] *das* v *Rangachi* 1 M H C R, 924] The principle embodied [illegible] Indian Act We think it is [illegible] *port of the Special Committee*

61 Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case whereby law, interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed

Interest by way of damages and special damages

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price.

(*a*) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable,

* Act I of 1877

(*b*) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller—from the date on which the payment was made.

Notes—"Sub clause (1) of this section follows section 54 of the English Act Sub clause (2) (*a*) follows the Scottish Law embodied in section 49 (3) of the English Act Sub-clause (2) (*b*) is new There has been a considerable conflict of opinion in India on the question whether interest can be claimed by way of damages on a breach of contract or on the price (See *Pollock* and *Mulla* page 412) In a recent Full Bench case in Madras the majority of the Court held that a person who has

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CHAPTER VII

MISCELLANEOUS

Exclusion of implied terms and conditions

62 Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract

Notes—"This clause is based on section 55 of English Act and is merely an application of the general maxim *Expressum facit cessare tacitum*, and *Modus' et con ventio vincunt legen* The rule is well recognised in France also (see *Chalmer's Sale of Goods*, p 137) The sale is a consequential contract and the parties may alter at

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03 *Lord Blackburn*, discussing the

said 'There is no rule of law to

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Reasonable time a question of fact

63 Where in this Act any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Notes—'This clause relates to the import of the term 'reasonable time' On the lines of section 56 of the English Act, it is provided that it is a question of fact in each case The same provision exists in the explanation to section 46 of the Indian Act'—*Report of the Special Committee.*

Auction sale

64 In the case of a sale by auction—

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and until such announcement is made, any bidder may retract his bid,

relating to the measure of damages as they are provided for in sections 73 and 74 of the Indian Act —*Report of the Special Committee*

Damages for non delivery

57 Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non delivery

Specific performance

58 Subject to the provisions of Chapter II of the Specific Relief Act, 1877,* in any suit for breach of contract to deliver specific or ascertained goods, the Court plaintiff, by its decree direct that without giving the defendant the of damages The decree may be tions as to damages, payment of the just, and the application of the plaintiff may be made at any time before the decree

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(*a*) set up against the seller the breach of warranty in diminution or extinction of the price, or

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(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage

Notes—"In this section the distinction between 'condition' and 'warranty' has been maintained"—*Report of the Special Committee*

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60 Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach

Notes—"This section is new and deals with what is known as anticipatory breach The remedies on an anticipatory breach have been recognised for a long time in England as well as in this country [See *Leigh* v *Patterson*, (1891) 129 R R 483

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61 Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case whereby law, interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed

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(*a*) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable,

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CHAPTER VII

Miscellaneous

62 Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage if the usage is such as to bind both parties to the contract

Exclusion of Implied terms and conditions

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Notes—"This section is based on section 52 of the English Act We have adopted it in this Bill in as much as it comes appropriately under the head of remedies As the principles relating to specific relief in India are contained in the Specific Relief Act, 1877, the provisions of this clause are expressly made subject of that Act"—*Report of the Select Committee*

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(2) the sale is complete when the auctioneer announces its completi[illegible] the fall of the hammer or in other customary manner, and until such ann[illegible] ment is made, any bidder may retract his bid,

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction ,

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person , and any sale contravening this rule may be treated as fraudulent by the buyer ,

(5) the sale may be notified to be subject to a reserved or upset price ,

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer

Notes — 'This section relates to auction sales The provisions of sections 122 and 123 of the Indian Act are not exhaustive We prefer to follow section 58 of the English Act but we have altered the arrangement of the different provisions to make them more clear The order we have adopted is supported by the provisions of the Puffer's Act 1867 (30 and 31 Vict, c 48) See also *Halsbury*, vol 25 page 280 Sub clause (5) of this clause re enacts the provisions of s 123 of the Indian Act — *Report of the Special Committee*

Repeal

65 Chapter VII of the Indian Contract Act, 1872, is hereby repealed

Savings

66 (1) Nothing in this Act or in any repeal effected thereby shall affect or be deemed to affect—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(*b*) [illegible] remedy in respect of any such right, title, [illegible] the commencement of this Act, or [illegible] of goods which is not expressly repealed by this Act, or

(*e*) any rule of law not inconsistent with this Act

(2) T[illegible] contracts for the sale of goods shall [illegible] anything contained in this Act [illegible] to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security

Notes —' This is a saving clause Sub-clause (1) items (a) to (c) save in general terms all transactions made, proceedings taken and rights and liabilities arising before this Bill comes into operation Item (*d*) of the sub clause saves any Act relating to the sale of goods which has not been expressly repealed by this Bill Thus such enactments as the Indian Merchant Shipping Act, 1923, or the Code of Civil Procedure, 1908, which contain special provisions relating to the sale of goods are saved

' In clause 3 of the present Bill we have introduced an express provision that the provisions of the Indian Act which are not inconsistent with the provisions of the Bill shall continue to apply to contracts for the sale of goods Thus the general Law of Contract as embodied in the Indian Act, has been made expressly applicable to contracts for the sale of goods

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the basis of the market price on the date of repudiation We do not approve of this suggestion , for if damages are assessed on the basis of the market rate on the date of repudiation, a party apprehending heavy loss on the due date, may take

advantage of a favourable market and repudiate the contract before the due date This we consider unreasonable In a series of decisions it has been laid down that ... R 39 Cal
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THE SCHEDULED DISTRICTS ACT, 1874

ACT NO XIV OF 1874

RECEIVED THE GOVERNOR GENERAL S ASSENT ON THE 8TH DECEMBER 1874

An Act to ascertain the enactments in force in various parts of British India, and for other purposes

Preamble

WHEREAS various parts of British India have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature,

And WHEREAS doubts have arisen in some cases as to which Acts or Regulations are in force in such parts and in other cases as to what are the boundaries of such parts And WHEREAS among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readier means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein

And WHEREAS it is expedient to declare that certain Acts are in force in a tract of land lying between the Railway Station at Satna and the eastern boundary of the Jabbalpur Division, It is hereby enacted as follows —

Notes—This Act applies to Sonthal Parganas 18 C W N 994

Short title

1 This Act may be called the Scheduled Districts Act, 1874

Local extent

This Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule hereto annexed, and it shall come into force in each of the Scheduled Districts on the issue of a notification under section 3 relating to such district

Interpretation clause

In this Act the term ' Scheduled Districts means the territories mentioned in the first schedule hereto annexed, and from the date fixed in the resolution next hereinafter mentioned, it shall also include any other territory to which the Secretary of State for India by resolution in Council, may declare the provisions of the 33rd of Victoria, chapter 3, section 1, to be applicable.

Repeal of enactments

2 The enactments mentioned in the second schedule hereto annexed shall be repealed

Notification of enactments in force in ' Scheduled Districts

3 The Local Government* may from time to time, by notification* in the local Gazette,*—

(a) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such district,

(b) declare of any enactment that it is not actually in force in any of the said districts or in any part of any such district,

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* Certain words after this repealed by Act 38 of 1920 have been omitted

(*c*) correct any mistake of fact in any notification issued under this section

Provided that a declaration once made under clause (*a*) or clause (*b*) of this section shall not be altered by any subsequent declaration other than a declaration under clause (*c*) of this section

Notes—This Act comes into force by virtue of notification 13 M 353, 10 B 274

Effect of notification under section 3

4 On the issue, under section 3, of a notification declaring what enactments are in force, or not in force, in any *Scheduled District, the enactments so notified* shall be deemed to be in force or not in force, according to the tenor of the notification, in such district, and every such notification shall be binding on all Courts of law

Power to extend enactments to Scheduled Districts

5 The Local Government may, from time to time, by notification* in the local Gazette* extend to any of the Scheduled Districts, or to any part of any such district any *enactment which is in force in any part of British* India at the date of such extension

Modification of enactments in their application to Scheduled Districts

5A † In declaring an enactment in force in a Scheduled District or part thereof under section 3 of this Act, or in extending an enactment to a Scheduled District or part thereof under section 5 of this Act, the Local Government* may declare the operation of the enactment to be subject to such restrictions and modifications as that Government thinks fit

Appointment of officers and regulation of their procedure

6 *The Local Government may from time* to time—

(*a*) appoint officers to administer civil and criminal justice, and to superintend the settlement and collection of the public revenue and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts,

(*b*) regulate the procedure of the officers so appointed, but not so as to restrict the operation of any enactment for the time being in force in any of the said districts

(*c*) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment *for the time being in force in such district* shall be exercised or performed

Appoint.—The Government can make appointment 10 B 274

Rules—*Vide* 22 A 495, 28 M 404, 26 C 874

Continuance of existing rules and officers

7 All rules heretofore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section 6, and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs

All existing officers so appointed previous to the date on which this Act comes into force in such district shall be deemed to have been appointed hereunder

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* Certain words after this repealed by Act 38 of 1920 have been omitted

† S 5A has been inserted by Act XII of 1891 Sch II

Settlement of questions as to boundary

8 Whenever any question arises as to the line of boundary between any of the Scheduled Districts*and other territory, such officer as the Local Government or (where the said district and the other territory are not subject to the same Local Government) as the Governor General in Council from time to time appoints may consider and determine such line of boundary,

and the order made thereon by such officer, if confirmed by the Government which appointed him shall be conclusive in all Courts of Justice

Place of imprisonment or transportation

9 Any person liable to be imprisoned or to be transported beyond sea under any order or sentence passed by any officer appointed under section 6 may (subject to such rules as the "Local Government"* may from time to time, prescribe in this behalf) be imprisoned in such jail or transported to such place as the Local Government directs

Extension to Satna strip of Acts relating to public gambling and salt

10 Act No III of 1867† is hereby declared to be in force in the tract of land ceded to the British Government in the year 1863, and lying between the Railway Station at Satna and the eastern boundary of the Jabbalpur District

Saving of criminal jurisdiction over European British subjects and savings of other laws

11 Nothing contained in this Act or in *any notification issued under the powers hereby* conferred shall be deemed—

(*a*) to affect the criminal jurisdiction of any Court over European British subjects, or

(*b*) to affect any law other than laws contained in Acts or Regulations or in rules made in exercise of powers conferred by such Acts or Regulations

THE FIRST SCHEDULE

(*See section 1*)

PART I

Scheduled Districts, Madras

I—*In Ganjam*

(1) The Gumsur Maliahs, including Chokapad
(2) The Surada Maliahs
(3) The Chinna Kimedi Maliahs
(4) The Pedda Kimedi Maliahs
(5) The Bodaguda Maliahs
(6) The Surangi Maliahs
(7) The Parla Kimedi Maliahs
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(11) The Jalantra Maliah
(12) The Mandasa Maliah
(13) The Budarasinghi Maliah
(14) The Kuttingia Maliah

II—*In Vizagapatam*

(1) The Joypur Zamindari
(2) Golconda Hills west of the River Boderu
(3) The Madugol Maliahs
(4) The Kasipur Zamindari
(5) The Panchipenta Maliahs
(6) Mondemkolla in the Merangi Zamindari
(7) The Konda Mutta of Merangi ‡
(8) The Gumma and Konda Mutta of Kurpam
(9) The Kottam, Ram and Konda Muttas of Palkonda

* Substituted by Act 38 of 1920

† In s 10 the words and No XXV of 1869" repealed by Act XII of 1891 Sch I have here been omitted The words "and No XIV of 1867 being repealed by Act (VI of 1902) have here been omitted

‡ The word 'Merangi has been substituted for the word "Balgam" by Act XII of 1891 Sch I

(*c*) correct any mistake of fact in any notification issued under this section

Provided that a declaration once made under clause (*a*) or clause (*b*) of this section shall not be altered by any subsequent declaration other than a *declaration under clause* (*c*) *of this section*

Notes—This Act comes into force by virtue of notification 13 M 353, 10 B 274

Effect of notification under section 3

4 On the issue, under section 3, of a notification declaring what enactments are in force or not in force, in any Scheduled District, the enactments so notified shall be deemed to be in force or not in force, according to the tenor of the notification, in such district, and every such notification shall be binding on all Courts of law

Power to extend enactments to Scheduled Districts

5 *The Local Government may, from time to time, by notification* in the* local Gazette* extend to any of the Scheduled Districts or to any part of any such district any enactment which is in force in any part of British India at the date of such extension

Modification of enactments in their application to Scheduled Districts

5A † In declaring an enactment in force in a Scheduled District or part thereof under section 3 of this Act, or in extending an enactment to a Scheduled District or part thereof under section 5 of this Act, the Local Government* may declare the operation of the enactment *to be subject to such restrictions* and *modifications* as that Government thinks fit

Appointment of officers and regulation of their procedure

6 The Local Government may from time to time—

(*a*) appoint officers to administer civil and criminal justice, and to superintend the settlement and collection of the public revenue and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts,

(*b*) regulate the procedure of the officers so appointed, but not so as to restrict the operation of any enactment for the time being in force in any

[illegible]

, powers or duties incident to in force in such district shall be exercised or performed

Appoint.—The Government can make appointment 10 B 274

Rules—*Vide* 22 A 495, 28 M 404; 26 C 874

Continuance of existing rules and officers

7 All rules heretofore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section 6, and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs

All existing officers so appointed previous to the date on which this Act comes into force in such district shall be deemed to have been appointed hereunder

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* Certain words after this repealed by Act 38 of 1920 have been omitted

† S 5A has been inserted by Act XII of 1891 Sch II

Settlement of questions as to boundary

8 Whenever any question arises as to the line of boundary between any of the Scheduled Districts and other territory, such officer as the Local Government or (where the said district and the other territory are not subject to the same Local Government) as the Governor General in Council from time to time appoints may consider and determine such line of boundary,

and the order made thereon by such officer, if confirmed by the Government which appointed him, shall be conclusive in all Courts of Justice

Place of imprisonment or transportation

9 Any person liable to be imprisoned or to be transported beyond sea under any order or sentence passed by any officer appointed under section 6, may (subject to such rules as the "Local Government' * may from time to time, prescribe in this behalf) be imprisoned in such jail or transported to such place as the Local Government directs

Extension to Satna strip of Acts relating to public gambling and salt

10 Act No III of 1867† is hereby declared to be in force in the tract of land ceded to the British Government in the year 1863, and lying between the Railway Station at Satna and the eastern boundary of the Jabbalpur District

Saving of criminal jurisdiction over European British subjects and savings of other laws

11 Nothing contained in this Act or in any notification issued under the powers hereby conferred shall be deemed—

(*a*) to affect the criminal jurisdiction of any Court over European British subjects, or

(*b*) to affect any law other than laws contained in Acts or Regulations or in rules made in exercise of powers conferred by such Acts or Regulations

THE FIRST SCHEDULE

(*See section 1*)

PART I

SCHEDULED DISTRICTS, MADRAS

I —*In Ganjam*

(1) The Gumsur Maliahs, including Chokapad
(2) The Surada Maliahs
(3) The Chinna Kimedi Maliahs
(4) The Pedda Kimedi Maliahs
(5) The Bodaguda Maliahs
(6) The Surangi Maliahs
(7) The Parla Kimedi Maliahs
(8) The Matters of Korada and Ronaba (otherwise called Srikarma)
(9) [*Repealed by Act XII of 1891*]
(10) The Jurada Maliah
(11) The Jalantra Maliah
(12) The Mandasa Maliah
(13) The Budarasinghi Maliah
(14) The Kuttingia Maliah

II —*In Vizagapatam*

(1) The Joypur Zamindari
(2) Golconda Hills west of the River Boderu
(3) The Madugol Maliahs
(4) The Kasipur Zamindari
(5) The Panchipenta Maliahs
(6) Mondemkolla in the Merangi Zamindari
(7) The Konda Mutta of Merangi ‡
(8) The Gumma and Konda Mutta of Kurpam
(9) The Kottam, Ram and Konda Muttas of Palkonda

* Substituted by Act 38 of 1920

† In s 10, the words and No XXV of 1869" repealed by Act XII of 1891 Sch I have here been omitted The words and No XIV of 1867 being repealed by Act (VI of 1902) have here been omitted

‡ The word Merangi has been substituted for the word 'Balgam' by Act XII of 1891, Sch I

(c) correct any mistake of fact in any notification issued under this section

Provided that a declaration once made under clause (a) or clause (b) of this section shall not be altered by any subsequent declaration other than a declaration under clause (c) of this section

Notes—This Act comes into force by virtue of notification 13 M 353, 10 B 274

Effect of notification under section 3

4 On the issue, under section 3, of a notification declaring what enactments are in force, or not in force in any Scheduled District the enactments so notified shall be deemed to be in force or not in force according to the tenor of the notification, in such district, and every such notification shall be binding on all Courts of law

Power to extend enactments to Scheduled Districts

5 The Local Government may, from time to time by notification* in the local Gazette* extend to any of the Scheduled Districts or to any part of any such district any enactment which is in force in any part of British India at the date of such extension

Modification of enactments in their application to Scheduled Districts

5A † In declaring an enactment in force in a Scheduled District or part thereof under section 3 of this Act or in extending an enactment to a Scheduled District or part thereof under section 5 of this Act, the Local Government* may declare the operation of the enactment to be subject to such restrictions and modifications as that Government thinks fit

Appointment of officers and regulation of their procedure

6 The Local Government may from time to time—

(a) appoint officers to administer civil and criminal justice and to superintend the settlement and collection of the public revenue and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts

(b) regulate the procedure of the officers so appointed, but not so as to *restrict the operation of any enactment for the time being in force in any* of the said districts

(c) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or performed

Appoint.—The Government can make appointment 10 B 274

Rules—*Vide* 22 A 495, 28 M 404; 26 C 874

Continuance of existing rules and officers

7 All rules heretofore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section 6, and in force at the time of the passing of this Act shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs

All existing officers so appointed previous to the date on which this Act comes into force in such district shall be deemed to have been appointed hereunder

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* Certain words after this repealed by Act 38 of 1920 have been omitted
† S 5A has been inserted by Act XII of 1891 Sch II

PART V

SCHEDULED DISTRICTS, PUNJAB

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul and Spiti

PART VI

SCHEDULED DISTRICTS, CENTRAL PROVINCES

Chhattishgarh Zamindaries, viz —

1 Khariar
2 Bindra Nawagarh
3 Sahezpur
4 Gandai
5 Silbeti
6 Barbaspur
7 Thakurtola
8 Lohara
9 Gondardehi
10 Fingeswar
11 Pandaria
12 Pendra
13 Matin
14 Uprora
15 Kenda
16 Lapha
17. Chhuri
18 Korba
19 Chapa
20 Bora Sambhar
21 Phuljhar
22 Kolabira
23 Rampur

Chanda Zamindaries

1 Ahiri
2 Ambagarh Chauki
3 Aundhi
4 Dhanora
5 Dudhmala
6 Gewarda
7. Jharapapra
8 Khutgaon
9 Koracha
10 Kotgal
11 Muramgaon
12 Panabaras
13 Palasgarh
14 Rangi
15 Sirsundi
16 Sonsari
17 Chandala
18 Gilgaon
19 Pawi Mutanda
20 Pategaon

Chindwara Jagirdaris

1 Harai
2 Chhater
3 Gorakhghat
4 Gorpani.
5 Baktagarh
6 Bardagarh.
7 Pachmarhi
8 Partabgarh
9 Almod
10 Sonpur
11 Bariam Pagara

PART VII

The Chief Commissionership of Coorg

PART VIII

The Chief Commissionership of the Andaman and Nicobar Islands *

PART IX

The Chief Commissionership of Ajmir and Merwara

PART X †

The Chief Commissionership of Assam

PART XI †

The Hill Tracts of Arakan

PART XII †

The Pargana of Manpur

PART XIII

[*Repealed* ‡ *by Act XIII of 1891, Sch 1*]

* The Little Cocos Island has been transferred to the administration of the [illegible]

THE SECOND SCHEDULE

(*See section 2*)

Number and year	Title.
* XXXVII of 1855 .	An Act to remove from the operation of the general Laws and Regulations certain Districts inhabited by Sonthals and others, and to place the same under the superintendence of an officer to be specially appointed for that purpose.
X of 1857 †	An Act to amend Act XXXVII of 1855

THE INDIAN SECURITIES ACT, 1920

ACT NO. X OF 1920

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 11TH MARCH, 1920

An Act to consolidate and amend the law relating to Government securities

WHEREAS it is expedient to consolidate and amend the law relating to Government securities, It is hereby enacted as follows —

Short title, extent and commencement

1 (1) This Act may be called the Indian Securities Act, 1920,

(2) It extends to the whole of British India, including British Beluchistan, and

(3) It shall come into force on the first day of April, 1920

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) "Government security" means promissory notes (including treasury bills), stock certificates, bearer bonds and all other securities issued by the Governor General in Council or by any Local Government in respect of any loan contracted either before or after the passing of this Act, but does not include a currency-note, and

(b) "prescribed" means prescribed by rules made under this Act

Notice of trust not receivable save as provided

3 (1) Save as otherwise provided in or under this Act, no notice of any trust in respect of any Government security shall be receivable by the Government.

(2) The Government shall not be deemed to have received notice of any trust by reason only of the fact that it has recognised an indorsement on a Government security by an executor or administrator as such, nor shall it inquire into to the terms of any Will by which such executor or administrator may be bound but, on being satisfied of the due appointment of such executor or administrator, it shall be entitled to treat him as the full owner of any Government security belonging to the estate of the person whom he represents

Right of survivors of joint or several payees of Government securities

4 (1) Notwithstanding anything in section 45 of the Indian Contract Act, 1872,‡—

* All entries before this have been omitted by Act 12 of 1927

† All entries after this have been omitted by Act 12 of 1927

‡ Act IX of 1872

(a) when a Government security is payable to two or more persons jointly, and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, and

(b) when a Government security is payable to two or more persons severally, and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representative of the deceased, or to any of them

(2) This section shall apply whether such death occurred or occurs before or after this Act comes into force

(3) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which sub section (1) applies

"(4) For the purposes of this section, a body incorporated under the Indian Companies Act, 1913, or the Co operative Societies Act, 1912, or any other enactment for the time being in force whether within or without British India, relating to the incorporation of associations of individuals, shall be deemed to die when it is dissolved" *

Indorsements to be made on security itself

5 Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881, † no indorsement of a Government promissory note shall be valid unless made by the signature of the holder inscribed on the back of the security itself

Holding of Government securities by holders of public offices

6 (1) In the case of any public office to which the Governor General in Council may, by notification in the *Gazette of India*, declare this sub section to apply, a Government security may be made or indorsed payable to or to the order of the holder of the office by the name of the office

(2) When a Government security is made or indorsed as aforesaid, it shall be deemed to be transferred without any or further indorsement from each hol[illegible] of the office on and from the date on [illegible]

[illegible]es to a third party a Government security made or indorsed as aforesaid, he shall subscribe the indorsement [illegible] office

[illegible] security now or heretofore standing in the [illegible]ffice, whereby the security has been or was made or indorsed payable to or to the order of the holder of the office by the name of the office, shall not be deemed to be or to have been invalid by reason only of the security having been so made or indorsed

(5) This section applies as well to an office of which there are two or more joint holders as to an office of which there is a single holder

Issue of securities to rulers of States in India

7 Notwithstanding anything in the Negotiable Instruments Act, 1881, † the Governor General in Council may, in respect of any loan, issue to the ruler of any State in India Government securities in such form and subject to such conditions as to negotiability succession and other matters as may be prescribed.

Indorser of Government security not liable for amount thereof

8 Notwithstanding anything in the Negotiable Instruments Act, 1881, † a person shall not, by reason only of his having indorsed a Government security, be liable to pay any money due, either as principal or as interest, thereunder.

* Inserted by Act II of 1928

† Act XXVI of 1881

Impression of signature on Government securities

9 (1) The signature of the person authorised to sign Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct on the securities

(2) A signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if it had been inscribed in the proper handwriting of the person so authorised.

Issue of duplicate, renewed, converted, consolidated or sub divided securities

Issue of duplicate securities

10 (1) When a Government security is alleged to have been lost, "stolen"* or destroyed either wholly or in part, and a person claims to be the person to whom but for the loss, "theft"* or destruction it would be payable, he may, on application to the prescribed officer, and on producing proof to his satisfaction of the loss, "theft"* or destruction and of the justice of the claim and on payment of the prescribed fee, if any, obtain from him an order for—

(*a*) the payment of interest in respect of the security said to be lost, "stolen"* or destroyed pending the issue of a duplicate security ; and

(*b*) the issue of a duplicate security payable to the applicant

(2) An order shall not be passed under sub-section (1) until after the issue of the prescribed notification of the loss, "theft"* or destruction

[illegible] passed under sub [illegible]

[illegible] ischarged under the [illegible] the whole of which is alleged to have been lost, stolen or destroyed, such security is found, any order passed in respect thereof under this section shall be cancelled "*

Renewal of bearer bonds

11 The holder of a bearer bond or other Government security payable to bearer, may, on application to the prescribed officer, on delivery of the bearer bond or other security, and on payment of the prescribed fee, if any, obtain from such officer a renewed bearer bond or other security, as the case may be

12 Subject to the provisions of section 13, a person claiming to be entitled [illegible]

[illegible] promissory note which appears to the prescribed officer to stand in the name of a deceased member of a Hindu undivided family governed by the *Mitakshara* law, a renewed promissory note shall not be issued to the applicant unless he [illegible] y and after such inquiry as may be [illegible] belonged to a Hindu undivided [illegible] the promissory note formed part [illegible] he applicant is the managing or sole surviving male member of the family

Explanation—The expression "Hindu undivided family governed by the *Mitakshara* law" shall, for the purposes of this section, be deemed to include a Malabar *tarwad*

Renewal of promissory notes in case of dispute as to title

13. (1) Where there is a dispute as to the title to a Government promissory note in respect of which an application for renewal has been made, the prescribed officer may—

* Inserted by Act XXI of 1927

(*a*) where any party to the dispute has obtained a final decision from a Court of competent jurisdiction declaring him to be entitled to such note, issue a renewed note in favour of such party or

(*b*) refuse to renew the note until such a decision has been obtained, or

(*c*) after such inquiry as is hereinafter provided and consideration of the result thereof, declare by order in writing which of the parties is in his opinion entitled to such note and may, after the expiration of three months from the date of such declaration, issue a renewed note in favour of such party in accordance with the provisions of section 12, unless within that period he has received notice that proceedings have been instituted by any person in a Court of competent jurisdiction for the purpose of establishing a title to such note

Explanation —for the purposes of this sub section the expression "final decision" means a decision which is not appealable or a decision which is appeal able but against which no appeal has been filed within the period of limitation allowed by law

(2) For the purpose of the inquiry referred to in sub section (1), the prescribed officer may himself record, or may request the District Magistrate to record or to have recorded, the whole or any part of such evidence as the parties may produce When such request has been
Magistrate may himself record or may
subordinate to him, or any Magistrate
and empowered by general or special order of the Local Government in this behalf, to record the evidence, and shall forward a copy thereof to the prescribed officer.

Explanation —For the purposes of this sub section, the Distract Magistrate means the District Magistrate having jurisdiction in the place where interest on the promissory note is payable and, where interest is payable at a presidency town the Chief Presidency Magistrate or at a place in a State in India, the Political Agent

(3) The prescribed officer or any Magistrate acting under this section may if he thinks fit, record evidence on oath

Renewal of other securities

14 Government securities other than those mentioned in sections 11 and *and 12 may be renewed in such circumstances* and in such manner as may be prescribed

Issue of converted, etc, securities

15 (1) The prescribed officer may, subject to such conditions as may be prescribed, on the application of a person claiming to be entitled to a Government security or securities, on being satisfied of the justice of the claim and on delivery of the security or securities receipted in the prescribed manner and on payment of the prescribed fee, if any, convert, consolidate or sub divide the security or securities, and issue to the applicant a new se

(2) in sub section
(1) ma ent classes or of
the same or different loans

Liability in respect of promissory note renewed, etc

16 (1) When a renewed Government promissory note has been issued under section 12, or a new Government promissory note has been issued upon conversion, consolidation or sub-division under section 15, in favour of any person, the note so issued shall be deemed to constitute a new contract between the Government and such person and all persons deriving title thereafter through him

(2) No such renewal conv
the rights as against the Gove
securities so renewed, converted

Discharge.

Immediate discharge in certain cases

17 On payment by or on behalf of the Government to the holder of a bearer bond or other Government security payable to bearer of the amount expressed therein on or after the date when it becomes due, or on renewal of a bearer bond or other security payable to bearer under section 11, or on renewal of a Government promissory note under section 13, or on conversion, consolidation or sub-division of a bearer bond or other security payable to bearer under section 15, the Government shall be discharged in the same way and to the same extent as if such bearer bond, promissory note or other security were a promissory note payable to bearer

Provided that, in the case of a Government promissory note renewed under section 13, nothing in this section shall be deemed to bar a claim against the Government in respect of such note by any person who had no notice of the proceedings under *that section, or who derives title through any such person*

Discharge in other cases

18 Save as otherwise provided in this Act—

(*i*) on payment of the amount due on a Government security on or after the date on which payment becomes due, or

(*ii*) when a duplicate security has been issued under section 10, or

(*iii*) when a renewed security has been issued under section 12 or section 13, or a new security or securities has or have been issued upon conversion, consolidation or sub division under section 15,

the Government shall be discharged from all liability in respect of the security or securities so paid or in place of which a duplicate, renewed, or new security or securities has or have been issued—

(*a*) in the case of payment—after the lapse of six years from the date on which payment was due ,

(*b*) in the case of a [illegible] the lapse of six years from the date of the publication [illegible] which the security is first [illegible] interest on the original security, whichever date is later ,

(*c*) in the case of a renewed security or of a new security issued upon conversion, consolidation or sub division—after the lapse of six years from the date of the issue thereof

Discharge in respect of interest

"18A Save as otherwise expressly provided in the terms of a Government security, no person shall be entitled to claim interest on any such security in respect of any *period which has elapsed after the earliest* date on which demand could have been made for the payment of the amount due on such security ' *

Summary procedure in certain cases.

Procedure on death of holder of securities not exceeding an aggregate value of five thousand rupees

19 (1) If within six months of the death of a person who was entitled to a Government security or securities (other than a security payable to bearer) the nominal or face value of which does not in the aggregate exceed five thousand rupees, probate of the Will or letters of administration of the estate of such person or a certificate granted under the Succession Certificate Act, 1889 † is not produced to the prescribed officer, such officer may, after inquiry in the manner provided in sub-sections (2) and (3) of section 13 determine who is the person entitled to the security or securities or to administer the estate of the deceased, and may—

* Inserted by Act XXI of 1927 † Act VII of 1889

(*a*) in the case of any such security relating to a loan due for repayment, authorise payment of the amount due thereon to such person, and

(*b*) in the case of any such security relating to a loan not due for repayment, authorise, in the case of a promissory note, the renewal of such promissory note in favour of such person, or, in the case of stock, the registration of the name of such person in substitution for the name of the deceased

(2) Upon the payment or renewal of any promissory note in accordance with sub section (1), the Government shall be discharged from all liability in respect of the note so paid or renewed, and any substitution of names made in accordance with clause (*b*) of subsection (1) shall, for the purposes of any claim against the Government deemed to have effected a valid transfer of the stock in respect of which it was made

(3) Any creditor or claimant against the estate of the deceased may recover his debt or claim out of money paid to any person under sub section (1) and remaining in his hands unadministered in the same manner and to the same extent as if the said person had obtained letters of administration of the estate of the deceased, and nothing in this section shall affect any claim of an executor or administrator or other representative of the deceased against such person other than a claim to recover amounts lawfully paid by him in due course of administration of the estate of the deceased

Securities held by minors and lunatics

Payment in case of securities held by minors and lunatics.

20 Where a Government security stands in the name of or is held by a minor or a person who is insane and incapable of managing his affairs, the interest accruing thereon or the capital sum payable in respect thereof on the maturity or discharge of the loan shall, where, in the case of interest payable, the nominal value of the security or in other cases the sum payable, does not exceed five thousand rupees, be paid in such manner as may be prescribed, and on any payment being so made, the Government shall, notwithstanding any provision of any enactment to the contrary, be discharged from all liability in respect thereof

Indemnity.

Indemnity

21 Notwithstanding anything in sections 10, 12 13 or 15, the prescribed officer may in any case arising under any of those sections—

(*i*) issue a duplicate or renewed security or convert, consolidate or sub divide a security or securities upon the applicant giving the prescribed indemnity against the claims of all persons claiming under the original security or under the security or securities so renewed, converted, consolidated or sub divided, as the case may be, or

(*ii*) refuse to issue a duplicate or renewed security or to convert consolidate or sub divide a security or securities unless such indemnity is given

Inspection of registers, books and documents

Inspection of documents

22 No person shall be entitled to inspect, or to receive information derived from any Government security in the possession of the Government or from any book, register or other document kept or maintained by or on behalf of Government in relation to Government securities or any Government security save in such circumstances and manner and subject to such conditions as may be prescribed

Penalty

Penalty

23 (1) If any person, for the purpose of obtaining for himself or for any other person payment of interest or of the capital sum due in respect of any Government

security or the issue of a duplicate security or the renewal, conversion, consolidation or subdivision of a Government security or securities makes to any authority under this Act a statement which is false and which he either knows to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both

(2) No Court shall take cognizance of any offence under sub section (1) save on the complaint of the authority to whom the false statement was made

Rules

Power to make rules

24 (1) The Governor General in Council may after previous publication make rules to carry out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely —

(a) the manner in which payment of interest in respect of Government securities is to be made and acknowledged,

(b) the circumstances in which Government securities must be renewed before further payment of interest thereon can be claimed,

(c) the form in which and the conditions subject to which Government securities may be issued to the rulers of States in India,

(d) the fees to be paid in respect of the issue of duplicate securities and of the renewal conversion, consolidation and sub division of Government securities,

(e) the proof which is to be produced by persons applying for duplicate securities

(f) the form and manner of publication of the notification mentioned in sub section (2) of section 10 and the manner of publication of the list mentioned in sub section (3) of that section,

(g) the officer who is to exercise all or any of the powers and to perform all or any of the duties referred to in sections 10 11, 12 13 15, 19 and 21,

(h) the manner of making the enquiry mentioned in the proviso to section 12,

(i) the circumstances and the manner in which securities other than securities payable to bearer or promissory notes are to be renewed

(j) the form in which securities delivered for discharge, renewal conversion consolidation or sub-division are to be receipted,

(k) the conditions subject to which securities may be converted, consolidated or sub divided,

(l) the person to whom and the manner in which payments are to be made in respect of Government securities standing in the name of, or held by minors or persons who are insane and incapable of managing their affairs,

(m) the taking of indemnities against adverse claims of third parties from persons who receive payment of interest or of the capital sum due in respect of Government securities, or who obtain duplicate, renewed, converted, consolidated or sub-divided securities,

(n) the manner in which any document relating to Government securities or any indorsement on a Government promissory note may on the demand of any person who from any cause is unable to write be executed on his behalf,

(o) enabling holders of Government stock to be described in the registers of such stock as trustees and either as trustees of any particular trust or as trustees without qualification and for the recognition of powers of attorney granted by holders of stock so described,

(p) the holding of Government stock by the holders of offices other than public offices and the manner in which and the conditions subject to which stock so held may be transferred,

(q) the mode of attestation of documents relating to Government stock

(r) generally all matters connected with the grant of duplicate, renewed, converted consolidated and sub divided securities, and

(s) the circumstances and the manner in which, and the conditions subject to which inspection of securities books, registers and other documents may be allowed or information therefrom may be given under section 22

(3) Nothing in any rules made under clauses (o) and (p) shall as between any trustees or as between any trustees and the beneficiaries under a trust be deemed to authorise the trustees to act otherwise than in accordance with the rules of law applying to the trust and the terms of the instrument constituting the trust, and neither the Government nor any person holding or acquiring any interest in any Government stock shall by reason only of any entry in any register maintained by or on behalf of the Government in relation to any Government stock or any stockholder or o
Government stock, be affected with notic
character of any stockholder or of any
holding of any Government stock

(4) Rules made under this section shall be published in the *Gazette of India* and shall thereupon have effect as if enacted in this Act

Repeals 25 *Repealed by Act XII of 1927*

THE INDIAN SLAVERY ACT, 1843

ACT NO V OF 1843

RECEIVED THE G G's ASSENT ON THE 7TH APRIL 1843

An Act for declaring and amending the law regarding the condition of Slavery within the Territories of the East India Company

Prohibition of sale of persons or right to his labour on ground of slavery

1 No public officer shall in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue sell or cause to be sold any person or the right to the compulsory labour or services of any person on the ground that such person is in a state of slavery

Notes —This Act has nothing to do with the relation existing between *Gossains*

be enforced 12 B H C R 155 [illegible] word slavery *vide* 41 M 334 = 42 Ind Cas 977

Bar to enforcement of rights arising out of alleged property in person as a slave

2 No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company

Bar to dispossession of property on ground of owner's slavery

3 No person who may have acquired property by his own industry or by the exercise of any art calling or profession or by inheritance assignment gift or bequest shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave

Penal offence against alleged slave

4 Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery

THE SOCIETIES REGISTRATION ACT, 1860

ACT NO XXI OF 1860

RECEIVED THE G G S ASSENT ON THE 21ST MAY, 1860

An Act for the Registration of Literary, Scientific and Charitable Societies

Preamble

WHEREAS it is expedient that provision should be made for improving the local condition of societies established for the promotion of literature, science or the fine arts, or for the diffusion of useful knowledge, *the diffusion of political education * or for charitable purposes, It is enacted as follows —

Societies formed by memorandum of association and registration

1 Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint stock Companies, form themselves into a society under this Act

Memorandum of association

2 The memorandum of association shall contain the following things (that is to say)—

the name of the society,
the objects of the society,
the names, addresses, and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association

Registration

3 Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act There shall be paid to the Registrar for evey such registration a fee of fifty rupees, or such smaller fee as the Governor General of India in Council may, from time to time, direct, and all fees so paid shall be accounted for to Government

Fees

Annual list of managing body to be filed

4 Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of the Joint stock Companies of the names, addresses and occupations of the governors council, directors, committee or other governing body then entrusted with the management of the affairs of the society

Property of society how vested.

5 The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being in the governing body of such society, and in all proceedings civil and criminal may be described as the property of the governing body of such society by their proper title

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* Inserted by Act 22 of 1927

Suits by and against societies

6 Every society registered under this Act may sue or be sued in the name of the president chairman or principal, secretary or trustees as shall be determined by the rules and regulations of the society, and in default of such determination in the name of such person as shall be appointed by the governing body for the occasion

Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal, secretary or the trustees thereof if on application to the governing body some other officer or person be not nominated to be the defendant

Suits not to abate

7 Not suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued but the same suit or proceedings shall be continued in *the name of or against the successor of such person*

Enforcement of judgment against society

8 If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable or against the body of such per son [illegible] ty [illegible] judgment, the fact of the part[illegible] d having sued or having been sued, as the case *may be on behalf of the society only and shall require to* have the judgment enforced against the property of the society

Recovery of penalty accruing under bye law

9 Whenever by any bye [illegible] law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three fifths of the members present at such meeting shall be necessary) any pecuniary penalty *is imposed for the breach of any rule or bye law of the* society such penalty when accrued may be recovered in any Court having jurisdiction where the defendant shall reside or the society shall be situate, as the governing body thereof shall deem expedient

Notes—The penalty imposed by society must be imposed in the manner described by the Act and not otherwise in order that it may be recoverable in Court A I R 1925 Oudh 107

Members liable to be sued as strangers

10 Any member who may be in arrear of a subscription which according to the rules of the society he is bound to pay or who shall possess himself of or detain any property of the society in a manner or for a time contrary to such rules or shall injure or destory any property of the society may be sued *for such* arrear or for the damage accruing from such detention injury or destruction of property in the manner hereinbefore provided

Recovery by successful defendant of costs adjudged

But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs he may elect to proceed to recover the same from the officer in whose name the suit shall be brought or from the society and in the latter case shall have process against the property of the said society in the manner above described

Notes—Where certain rules were framed by a society before it was registered but a copy of the same was lodged with the Registrar, they do not get legal force

A penalty for contravening the provisions of such rules cannot be recovered in a Court of law 80 Ind Cas 556

Members guilty of offences punishable as strangers

11. Any member of the society who shall steal, purloin or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence

Societies enabled to alter, extend or abridge their purposes

12 Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society,

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting

Provision for dissolution of societies and adjustment of their affairs

13 Any number not less than three fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settle[illegible] ling to the [illegible] s the gover[illegible] ny dispute [illegible] the adjust[illegible] civil juris[illegible] tuate ; and [illegible] site :

Assent required

Provided that no society shall be dissolved unless three fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a generel meeting convened for the purpose.

Government consent

Provided that, whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved without the consent of Government

Upon a diss[illegible] ber to receiv[illegible]

14 If [illegible] stered under this Act, there [illegible] satisfaction of all its debts [illegible] property whatsoever, the [illegible] d to, or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in

default thereof, by such Court as aforesaid provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint stock Company

Clause not to apply to Joint stock Companies

Notes —The following amendments were made by the Societies Registration Act (Bom Act II of 1912) —

"Whereas it is expedient to amend the Societies Registration Act (XXI of 1860) in manner hereinafter appearing,

And whereas the previous sanction of the Governor General required by s 5 of ths Indian Councils Act (55 and 56 Vict, c 14, 1892), has been obtained for the passing of this Act, It is hereby enacted as follows —

Amendment of section 14

Notwithstanding anything contained in s 14 of the Societies Registration Act, 1860, hereinaftercalled "the said Act" it shall be lawful for the members of any society dissolved under s 13 of the said Act to determine by a majority of the votes of the members present presonally or by proxy at the time of the dissolution of such society that any property whatsoever remaining after the satisfaction of all its debts and liabilities shall be given to Government to be utilised for any of the purposes referred to in s 1 of the said Act

The above alterations were made by Bom Act II of 1912 and is applicable only within the territorial limits of the Bombay Presidency To other parts of India it is not at all applicable

Member defined

15 For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations, but in all proceedings under this Act no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months

Disqualified Members

Governing body defined

16 The governing body of the society shall be the governors, council, directors, committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted

Registration of societies formed before Act

17 Any company or society established for a literary scientific or charitable purpose, and registered under the Act XLIII of 1850,* or any such society established and constituted previously to the passing of this Act but not registered under the said Act XLIII of 1850,* may at any time hereafter be registered as a society under this Act, subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three fifths of the members present personally, or by proxy, at some general meeting convened for that purpos by the governing body

Assent required

In the case of a company or society registered under Act XLIII of 1850,* [illegible] body shall have been [illegible] be competent for the members thereof, upon due notice, to create for itself a governing body to act for the society thenceforth

* Repealed by Act X of 1866, s 219

A penalty for contravening the provisions of such rules cannot be recovered in a Court of law 80 Ind Cas 556

Members guilty of offences punishable as strangers

11 Any member of the society who shall steal, purloin or embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner, as any person not a member would be subject and liable to in respect of the like offence

Societies enabled to alter, extend or abridge their purposes

12 Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society,

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the

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meeting convened by the governing body at an interval of one month after the former meeting

Provision for dissolution of societies and adjustment of their affairs

13 Any number not less than three fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settle

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Assent required

Provided that no society shall be dissolved unless three fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person or by proxy, at a generel meeting convened for the purpose

Government consent

Provided that, whenever the Government is a member of, or a contributor to, or otherwise interested in, any society registered under this Act such society shall not be dissolved without the consent of Government

Upon a dissolution no member to receive profit

14 If upon the dissolution of any society registered under this Act there shall remain after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to, or distributed among the members of the said society or any of them, but shall be given to some other so iety, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in

(3) It shall come into force on the first day of April, 1925.

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Court" means a Civil or Revenue Court,

(*b*) "Indian soldier" means any person subject to the Indian Army Act, 1911, "or the Indian Air Force Act, 1932",*

(*c*) "prescribed" means prescribed by rules made under this Act, and

(*d*) "proceedings" include any suit appeal or application

Circumstances in which an Indian soldier shall be deemed to be serving under special conditions

3 For the purposes of this Act, an Indian Soldier shall be deemed to be or, as the case may be, to have been serving—

(*a*) under special conditions—when he is or has been serving under war conditions, or overseas, or at any place in Persia, Tibet, Afganistan, Kashmir, Nepal or China, or with any unit the headquarters of which are situated at any place in Chitral, Waziristan, the North West Frontier Province or British Baluchistan which is more than fifty miles distant by road from the nearest railway station,

(*b*) under war conditions—when he is or has been, at any time during the continuance of any hostilities declared by the Governor General in Council by notification in the *Gazette of India* to constitute a state of war for the purposes of this Act or at any time during a period of six months thereafter,—

(*i*) serving out of India,

(*ii*) under order to proceed on field service,

(*iii*) serving with any unit which is for the time being mobilised, or

(*iv*) serving under conditions which in the opinion of the prescribed [illegible] of absence to enable him to attend [illegible] he is or has been at any other [illegible] which has been declared by the [illegible] in the *Gazette of India* to be [illegible]

(*c*) overseas—in relation to any place in British India, other than Aden, when he is or has been serving in Aden or in any place outside India (other than Ceylon) the journey between which and British India is ordinarily undertaken wholly or in part by sea, and, in relation to Aden, when he is or has been serving in any place other than Aden

Particulars to be furnished in plaints, applications or appeals to Court

4 If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is an Indian soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal

Power of Collector to intervene in case of unrepresented Indian soldier

5 If any Collector has reason to believe that any Indian soldier, who ordinarily resides, or has property in his district and who is a party to any proceeding pending *before any Court, is unable to appear therein,* the Collector may certify the facts in the prescribed manner to the Court

Notice to be given in case of unrepresented Indian soldier

6 If Collector has certified under section 5 or if the Court has reason to believe, that an Indian soldier, who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf,

* Certain words after this have been inserted by Act XIV of 1932

the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority.

Provided that Court may refrain from suspending the proceeding and issuing the notice if—

(*a*) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of pre emption, or

(*b*) the interests of the soldiers in the proceeding are, in the opinion of the Court, either identical with those or any other party to the proceeding and adequately represented by such other party or merely of a formal nature

Postponement of proceedings

7. If, on receipt of a notice under section 6, the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the not ... that a postponement of ... the interests of justice, ... respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit

Court may proceed when certificate received

8 If, after issue of a ... a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

Postponement of proceedings against Indian solider on leave

9. When any document purporting to be signed by the Commanding Officer of an Indian soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier—

(*a*) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or

(*b*) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect of such soldier, may, in any case such as is referred to in the proviso to section 6, and shall, in any other case, be postponed in the manner provided in section 7.

Power to set aside decrees and orders passed against an Indian soldier serving under war or special conditions

10 (1) In any proceeding before a C ... been passed ... was serving after the 1st day of April, 1925, whilst he was serving under any special conditions, the soldier may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions if any, as it thinks fit to impose, make an order accordingly

(2) No such application shall be entertained unless it is made within two months from the expiry of the first period of thirty days, after the date of the decree or order, or where the summons or notice was not duly served on the applicant, after the date on which the applicant had knowledge of the decree or order, during no part of which the soldier was serving under special conditions.

Provided that the provisions of section 5 of the Indian Limitation Act, 1908, shall apply to such applications

(3) When the decree or order in respect of which an application under sub section (1) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application as the case may be

Notes —*Vide* 27 C W N 193=75 Ind Cas 262

11 In computing the period of limitation prescribed by the Indian Limitation Act, 1908, or any other law for the time being in force for any suit appeal or application to any Court any party to which is or has been an Indian soldier the time during which the soldier has been serving under war conditions since the 4th day of August, 1914, or under any special conditions since the 1st day of April 1925, shall be excluded.

Modification of law of limitation where Indian soldier serving under war or special conditions is a party

Provided that the ...

conditions that can be excluded in comp... Soldiers Act and the cert... clusive on the point 104 ... an Indian soldier at the ... 1924 Lah 395, 71 Ind ... Ind Cas 379, 73 Ind Cas ...

12 If any Court is in doubt whether, for the purposes of section 10 or section 11 any Indian soldier is or was at any particular time serving under war or other special conditions, it may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point

Power of Court to refer question as to whether service was under war or other special conditions

13 The Local Government, after consulting the High Court, may, by notification in the local official gazette, make rules to provide for all or any of the matters, namely —

Rule making power

(*a*) the manner and form in which any notice or certificate under this Act shall be given,

(*b*) the period for which proceedings or any class of proceedings shall be postponed under section 7,

(*c*) the persons who shall be the prescribed authorities for the purposes of this Act,

(*d*) any other matter wh...

(*e*)

14 ... *Gazette* ... all or any of the provisions of this Act shall apply to any other class of persons in the service of His Majesty specified in such notification* in the same manner as they apply to Indian soldiers

Power to apply the provisions of the Act to other persons in the service of the Crown

15 *Repealed by Act XII of 1927*

* For Notification directing that all the provisions of this Act shall apply ... Indian personnel of the Hong Kong Singapore Brigade Royal Artillery ... and O Vol 5, p 624

THE SPECIAL MARRIAGE ACT, 1872

ACT NO III OF 1872

RECEIVED THE G G S ASSENT ON THE 22ND MARCH, 1872

An Act to provide a form of Marriage in certain cases

Preamble

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan Parsi Buddhist Sikh or Jaina religion, "and for persons who profess the Hindu Buddhist, Sikh or Jaina religion" * and to legalize certain marriages the validity of which is doubtful, It is hereby enacted as follows —

Local extent

1 This Act extends to the whole of British India

Commencement

[*Repealed by Act XVI of 1874*]

Conditions upon which marriages under Act may be celebrated

2 Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muhammadan, or the Parsi or the Buddhist, or the Sikh or the Jaina religion, "or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion"* upon the following conditions —

(1) neither party must, at the time of the marriage, have a husband or wife living

(2) the man must have completed his age of eighteen years, and the woman her age of fourteen years according to the Gregorian calendar

(3) each party must if he or she has not completed the age of twenty one years have obtained the consent of his or her father or guardian to the marriage

(4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal

1st Proviso —No such law or custom other than one relating to consanguinity or affinity, shall prevent them from marrying

2nd Proviso —No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great great grand father or great-great grand mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other

Appointment of marriage Registrars

3 The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being for any portion of the territory subject to its administration The officer so appointed shall be called "Registrar of Marriages under Act III of 1872", and

* Inserted by Act 30 of 1923

is hereinafter referred to as "the Registrar" The portion of territory for which any such officer is appointed shall be deemed his district *

One of the parties to intended marriage to give notice to Registrar

4 When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given

Such notice may be in the form given in the first schedule to this Act.

Notice to be filed and copy entered in the Marriage Notice Book

5. The Registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Goverment, to be called the 'Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same

Objection to marriage

6 Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf

Procedure on receipt of objection

7 On receipt of such notice of objection, the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court

Objector may file suit

The person objecting to the intended marriage may file a suit in any civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2

Certificate of filing of suit to be lodged with Registrar

8 The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect [illegible] filed If such certificate [illegible]

from the receipt of notice of [illegible]

jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court the marriage shall not be solemnized till the decision of such Court has been given, and the period allowed by law for appeals from such decision has elapsed, or, if there be an

* For notifications appointing Registrar under s 3 for Districts in—

(1) Assam see Assam Rules Manual, Ed 1893, p 26

(2) Bombay Presidency, see Bombay List of Local Rules and Orders Vol I Ed 1896 p 98

(3) Central Provinces, see Central Provinces List of Local Rules Ed 1896, p 19

(4) North Western Provinces and Oudh, see Notification at [illegible] N W Provinces and Oudh List of Local Rules and Orders, Ed 1894

appeal from such decision, till the the decision of the Appellate Court has been given

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, such marriage may be solemnized

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2) (3) or (4) of section 2 the marriage shall not be solemnized

Court may fine when objection not reasonable

9 Any Court in which any [illegible] filed [illegible] exceeding one thousand rupees, on the person objecting and award it, or any part of it to the parties to the intended marriage

Declaration by parties and witnesses

10 Before the marriage is solemnized, the parties and three witnesses, shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act If either party has not completed the age of twenty one years the declaration shall also be signed by his or her father or guardian, except in the case of a widow and, in every case, it shall be countersigned by the Registrar

Marriage how to be solemnized

11 The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration It may be solemnized in any form provided that each party says to the other in the presence and hearing of the Registrar and witnesses "I, (A), take thee, (B), to be my lawful wife (or husband)"

Place where marriage may be solemnized

12 The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon

Certificate of marriage

13 When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the 'Marriage Certificate Book under Act III of 1872', in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses

Transmission of certified copies of entries in marriage certificate book to the Registrar General of Births, Deaths and Marriages

13A * The Registrar shall send to the† Registrar General of Births Deaths and Marriages for the territories within which his district is situate, at such intervals as the 'Local Government' ‡ from time to time directs, a true copy certified by him, in such form as the 'Local Government' ‡ from time to time, prescribes, of all entries made by him in the said Marriage Certificate Book since the last of such intervals

* S 13A has been inserted by Act VI of 1886 s 9

† As to the duty of the Registrar General to make and keep indexes of the certified copies sent to his office under this section, see Act VI of 1886, s 7

‡ *The words within quotations have been inserted by Act 38 of 1920*

14 * The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act

Fees

The Registrar may, if he thinks fit, demand payment of any such fee before r - rmance of any other duty in respect of

, shall at all reasonable times be open as evidence of the truth of the statements therein contained Certified extracts therefrom shall, on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract

15 Every person, who, being at the time married procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code, as the case may be , and the marriage so solemnized is void

Penalty on married person marrying again under Act

16 Every person married under this Act, who during the life time of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage

Punishment of bigamy

17 The Indian Divorce Act shall apply to all marriages contracted under this Act and any such marriage may be declared null or dissolved in the manner therein provided and for the causes therein mentioned or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1) (2, (3) or (4) of section 2 of this Act

Indian Divorce Act to apply

18 The issue of marriages solemnized under this Act shall if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity and the provisos to section 2 of this Act shall apply to them

Law to apply to issue of marriages under Act

19 Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions , nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage but if the validity of any such mode shall hereafter come into question before any Court such question shall be decided as if this Act had not been passed

Saving of marriages solemnized otherwise than under Act

20 [*Registry of marriages contracted before passing of Act*] *Repealed by Act XII of 1876*

21 Every person making signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be deemed guilty of the offence described in section 199 of the Indian Penal Code

Penalty for signing declarations or certificates containing false statements

* r trars of Marriages prescribed by— see Bombay List of Local Rules and 98

• Provinces see Central Provinces List of Local Rules and Orders Ed 1896 p 19

(3) Government N W P and Oudh see Notification at p 42 of the N W P and Oudh List of Local Rules and Orders Ed 1894

"22 * The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family

Effect of certain marriages on co parcenary

Notes —Before the enactment of this section it was held that a declaration und r this Act was effective only for the purpose of the Act and did not involve the renunciation of the Hindu faith 26 C W N 799

23 * A person professing the Hindu Buddhist, Sikh or Jaina religion who marries under this Act shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850† applies ·

Rights of succession in certain cases of marriage under Act

Provided that nothing in this section shall confer on any person any right to any religious office or service, or to the management of any religious or charitable trust

24 * Succession to the property of any person professing the Hindu Buddhist Sikh or Jaina religion, who marries under this Act, and to the property of the issue of such marriage, shall be regulated by the provisions of the Indian Succession Act, 1865‡

Succession to the property of parties married under Act

25 No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption

Person marrying under Act not to have right of adoption

26 When a person professing the Hindu, Buddhist, Sikh or Jaina religion marries under this Act, his father shall, if he has no other son living have the right to adopt another person as a son under the law to which he is subject'

Adoption by father of person marrying under Act

FIRST SCHEDULE

(*See section 4*)

NOTICE OF MARRIAGE

To , a Registrar of Marriages under Act III of 1872 for the District

I hereby give you notice that a marriage under Act III of 1872 is intended to be had within three calendar months from the date hereof between me and the other party herein named and described (that is to say) —

Names	Condition	Rank or possession	Age	Dwelling place	Length of residence
A B	Unmarried Widower	Landowner	Of full age		23 days
C D	Spinster	.	Minor		

Witness my hand, this day of 187

(*Signed*) *A B*

* Inserted by Act 30 of 1923 † Act XXI of 1850
‡ Act X of 1865 see now Act 39 of 1925

SECOND SCHEDULE

(*See section 10*)

DECLARATION TO BE MADE BY THE BRIDEGROOM

I, A B, hereby declare as follows —

1 I am at the present time unmarried :

2 I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion [or (as the case may be) I profess the Hindu, or the Buddhist or the Sikh, or the Jaina religion] *

3 I have completed my age of eighteen years

4 I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal

[*And when the bridegroom has not completed his age of twenty one years*

5 The consent of my father (*or* guardian, *as the case may be*) has been given to a marriage between myself and *C D*, and has not been revoked]

6 I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment and also to fine

(*Signed*) *A B* [*the bridegroom*]

DECLARATION TO BE MADE BY THE BRIDE

1 *C D* hereby declare as follows —

1 I am at the present time unmarried

2 I do not profess the Christian Jewish, Hindu, Mahammadan Parsi, Buddhist, Sikh or Jaina religion [or (as the case may be) I profess the Hindu, or the Buddhist, or the Sikh or the Jaina religion]*

3 I have completed my age of fourteen years

4 I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal

[*And when the bride has not completed her age of twenty one years unless she is a widow*

5 The consent of *M N* my father (*or* guardian, *as the case may be*) has been given to a marriage between myself and *A B* and has not been revoked]

6 I am aware that if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true I am liable to imprisonment and also to fine

(*Signed*) *C D* [*the bride*]

Signed in our presence by the above-named *A B* and *C D*

G H
I J } *three witnesses*]
K L

[*And when the bridegroom or bride has not completed the age of twenty one years except in the case of a widow*

.. . ny consent by the above named *A B* and *C D* above named

(*Countersigned*) *C L*

Registrar of Marriages under Act III of 1872,
for the District of

Dated the *day of* 18

THIRD SCHEDULE

(*See section 13*)

REGISTRAR'S CERTIFICATE

I, *E F* certify that on the of 18 appeared before me *A B* and *C D* each of whom in my presence and in my presence of three credible witnesses

* Inserted by Act 30 of 1923

whose names are signed hereunder, made the declarations required by Act III of 1872 and that a marriage under the said Act was solemnized between them in my presence

(*Signed*) *E F*

Registrar of Marriages under Act III of 1872, for the District of

(*Signed*) *A B* and *C D*

G H
I J } [*three witnesses*]
K L

Dated the *day of* 18

FOURTH SCHEDULE

(*See section 20*)

[*Repealed by Act XII of 1876*]

THE SPECIFIC RELIEF ACT, 1877.

ACT NO 1 OF 1877,

RECEIVED THE G G 's ASSENT ON THE 7TH FEBRUARY, 1877.

An Act to define and amend the law relating to certain kinds of Specific Relief

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits,

Preamble

It is hereby enacted as follows :—

PART 1,

PRELIMINARY

Short title

1 This Act may be called the Specific Relief Act, 1877.,

Local extent

It extends to the whole of British India except the Scheduled Districts as defined in Act No XIV of 1874.

Commencement

And it shall come into force on the first day of May, 1877

[illegible] hole of

[illegible]

amend the law [illegible]
in Courts to wh[illegible]
this Act does n[illegible]
justice, equity and good conscience 30 Ind Cas 365

2 [*Repealed by Act XII of 1891.*]

Interpretation-clause

3 In this Act, unless there be something repugnant in the subject or context,—

Obligation'.

'obligation' includes every duty enforceable by law •

trust'

'trust' includes every species of express implied, or constructive fiduciary ownership

'trustee'

'trustee' includes every person holding expressly, by implication or constructively, a fiduciary character :

Illustrations

(*a*) Z bequeaths land to A, "not doubting that he will pay thereout an annuity of Rs 1 000 to B for his life". A accepts the bequest A is a trustee, within the meaning of this Act for B, to the extent of the annuity

(*b*) A is the legal, medical or spiritual adviser of B By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B A is a trustee, for B within the meaning of this Act of [illegible]

[illegible] own purpose the state of B's account A [illegible] Act, for B, of the benefit gained by him by [illegible]

(*d*) A, the mortgagee of certain leaseholds, renews the lease in his own name A is a trustee within the meaning of this Act, of the renewed lease, for those interested [illegible]

[illegible] for the firm [illegible] h goods pre- [illegible] considerable [illegible] of the profit so made

(*f*) A, the manager of B s indigo-factory becomes agent for C a vendor of indigo-seed, and receives without B s assent commission on the seed purchased from C for the factory A is a trustee, within the meaning of this Act, for B, of the commission so received

(*g*) A buys certain land with notice that B has already contracted to buy it A is a trustee within the meaning of this Act, for B, of the land so bought

(*h*) A buys land from B, having notice that C is in occupation of the land A omits to make any inquiry as to the nature of C's interest therein A is a trustee, within the meaning of this Act, for C, to the extent of that interest

'settlement'

'Settlement' means any instrument (other than a Will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of:

Words defined in Contract Act

and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act

Creation of trust—Trust can be created by oral declaration or written document 17 C 620

Trustee—An administrator is a trustee but agreement by administrator in excess of his power is not specifically enforceable 14 C W N 451=5 Ind Cas 236; 36 C L J 46

Savings

4 Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(*a*) to give any right to relief in respect of any agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract, or

(*c*) to affect the operation of the Indian Registration Act*, on documents

Clause (a)—A contract so long as it is voidable cannot be specifically enforced 22 C 545 Neither a contingent contract is so enforceable 12 C 152 Specific performance can be enforced only when there is a completed and final contract between the parties and binding on the defendant A W N 1884, 161 Where there is no mutuality in a contract, specific performance cannot be obtained 16 C W N 74 (P C)=21 M L J 1156, 41 Ind Cas 45

See also 10 C 588, 20 C W N 921, 22 Ind Cas 612

There may be cases which cannot be brought within the four corners of any of the provisions of the Contract Act as to the invalidity or voidability of agreements but in which nevertheless a Court of Equity may properly refuse to exercise its

---

* Act XVI of 1908

jurisdiction under this Act. 18 C W. N. 689 The Court will not enforce specific performance of a contract the terms of which are uncertain. 22 C W N 66

Where the plaintiff calls upon the defendant to perform a contract different from the real agreement between them, he cannot claim performance thereof 29 C L. J 256

Specific performance of a contract of sale of a minor's property made by his guardian should not be enforced against the minor unless the Court is quite certain that the agreement [illegible] relation of the manage [illegible] the same as that of a [illegible] manager of a joint [illegible] members to sell immovable property, it is open to the purchaser to claim specific performance of the contract against the whole joint family including the minors. 18 N L. R 67, 2 Pat L. J 513

See also 20 Ind Cas 282, 18 Ind. Cas 911, 15 Ind. Cas 403; 46 C 771, 20 C. W N 66

Specific relief how given

5 Specific relief is given—

(*a*) by taking possession of certain property and delivering it to a claimant,

(*b*) by ordering a party to do the very act which he is under an obligation to do,

(*c*) by preventing a party from doing that which he is under an obligation not to do,

(*d*) by determining and declaring the rights of parties otherwise than by award of compensation; or

(*e*) by appointing a receiver

Clause (a)—comprises reliefs given in ss 3 to 4

Clause (b)—comprises reliefs given in ss. 12 to 13 and ss 45 51

Clause (c)—comprises reliefs given in ss 52 to 53 and ss 56-57

Clause (d)—comprises reliefs given in ss 13 34; and 39-41 and ss 42 43

Clause (e)—comprises reliefs given in chapter VII

Preventive relief

6 Specific relief granted under clause (c) of section 5 is called preventive relief.

Relief not granted to enforce penal law

7 Specific relief cannot be granted for the mere purpose of enforcing a penal law

Notes —*Vide* s 59 clause (e) where it is laid down that injunction cannot be granted to stay proceedings in a criminal matter

PART II.

Of Specific Relief.

CHAPTER I

Of Recovering Possession of Property

(*a*) *Possession of Immovable Property.*

Recovery of specific immovable property

8 A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.

Scope —This section lays down the general rules Section 9 lays down the summary relief But where a plaintiff sues for possession on the basis of title and fails to establish his title, he cannot be granted a decree for possession under the first para of section 9 33A 174 (F. B)

Suit by person dispossessed of immovable property

9 If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit,* recover possession thereof, notwithstanding any other title that may be set up in such suit

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

Object—The object of this section is to discourage people from taking the law

=28 Ind Cas 282

Scope.—This section shows that no one though entitled to sue under this section is bound to do so but that he can always bring a regular suit founded upon the title, either in addition to or instead of a suit under that section 23 Ind Cas 397, 42 A 191

The object of this section is clearly to enable a person dispossessed to recover possession merely by proving previous and wrongful dispossession without proving another t to the The word annot be

see also 48 Ind Cas 433 So arties the tenant if clause (c) of s 23

n is not pleaded

4 A L J 601

Possession—must imply, first some actual power over the object possessed and secondly, some amount of will to avail oneself of that power 4 Ind Cas 359 possession has been

n ouster of the landlord 344=9 M L T 205, 12 38, 5 S L R 42, 32 Ind 13 C W N 305, 37 Ind.

Cas 20 , 94 Ind Cas 70 , 96 Ind Cas 251

* Certain words after this were repealed by the Repealed ar
of 1891)

possession and alleged that he had himself let the defendant into possession A W N. 1900, 7 The fact that the cattle of a person occasionally grazed on a piece of land is not by itself sufficient to show that the land was in the

r normal

fore it for

invoked

'here the auction purchaser did not proceed under s 319 of C P Code but dispossessed a

dispossession was not in due course

gal process which ought not to have

of law within the meaning of s 9

otherwise than in due course of

J 404, see also 17 C W N 956

ht not to be made in a suit under this section 30 M L J 326, 46 Ind Cas 885, 101 Ind Cas 630, 102 Ind Cas 661 But the fact of demanding such mesne profits does not disqualify a plaintiff to get restoration of possession 25 Ind Cas 802 See also 24 A 501, 29 C 614, 17 W R 70, 26 B. 673

Damages—A claim for damages ought not to be joined with a claim for recovery of possession under this section 8 A L J 910

Incorporeal rights—Under the terms of this section rights classified as incorporeal rights are taken out of its operation 20 C W N 1158 But specific portions of survey numbers are immovable property 12 Ind Cas. 190, 18 C 80, 19

ovable property 5 M L. J 95

73, 17 W R 70 An incorporeal

property 29 C. 614 A right to

44 (F B)

possessson of land for a period

entitled to recover possession of the same

ion is not brought

ot allowed to plead title 29 Ind Cas 210; 25 A L J 857 The question of title is not to be determined in a suit under this section 12 C L J 603, A W N 1889, 89

Other relief—An order to the effect that the cost of removal of certain huts should be paid by the defendant is not within the scope of this section 25 C 803

Dispossession of tenants in execution of a decree against the landlord, *is in due* course of law 14 C W N 409—5 Ind Cas 793

Forcible dispossession of a *ticca* tenant after the period of lease is not dispossession in the course of law 9 W R 123; 17 C W N 501, see also 7 C W. N 218, 8 C W N 446 Mortgagee in possession can sue when dispossessed by the mortgagor *forcibly* 5 B 446

entitle the plaintiff to obtain a decree for recovery of possession 17 C 256

Dispossession by one co owner—This section applies when one co owner dis

Ind Cas 569

n does not control the operation of

tion is *prima facie* evidence of title

drawn between the words 'forcible dispossession' as used in s 9 and the llegal ejectment' as used in s 23, Cl (e) of Act X of 1859, 17 C W. N 1201

to any

is not

, plain

ection

A party can not sue for possession for this share only 19 C W N 120=19 C L J 117 ; 29 M. L J 760 ; but see 19 C W N 1117=28 Ind Cas 570 ; 19 C W. N. 120 A *pujari* of a *Thakurbari* who holds the keys of the door is competent to sue. 44 Ind Cas 497 A tenant cannot sue under this section against his landlord 13 C L J 250. A licensee of land can sue 17 Ind Cas 469 A mere trespasser cannot sue under this section 15 B 685 This section is wide enough to include the case of [illegible] ion of property jointly [illegible] evidence of possession [illegible] to it is a matter to be determined by the final Court of fact 15 C L J. 1

Limitation—The suit must be instituted within six months from the date of dispossession Constructive possession which goes with the title is also sufficient for the purpose of this section 48 Ind Cas 415 ; 22 Ind Cas 279 , 22 Ind. Cas 977 , see also 22 C W N 931 , 21 Ind Cas 188

Appeal—No appeal lay from any decree or order passed in any suit under this section Applications for execution of decree are proceedings in suits Consequently, no appeal lay from an order passed in execution of a decree in a suit under this section 26 M 438 , see also A W N 1886, 138

Revision.—In a suit under this section which is dismissed a remedy by way of a suit for declaration of title is open to the aggrieved party and consequently no revision will lie 8 A L J 791 , 30 A 331 , 8 Ind Cas 215

Revival—No revival is allowed in decision under this section 31 Ind Cas. 307 ; but see 4 M. 217

Limitation—Such a suit can be brought within six months after dispossession , if brought more than six months after dispossession, the plaintiff cannot succeed unless he proves title 13 A 537 , 7 W R 332 , 26 C 579

Resjudicata—Where the question of title was decided in a suit under this section it does not operate as *res judicata* as neither the parties nor the Court has any power to enlarge the scope of the suit 4 Ind Cas 974 , see also 24 B 251

Criminal proceeding—Criminal proceedings if any, taken under s 145 of the Criminal Procedure Code, in no way interfere with the plaintiff's right under this section 30 A 331 , 28 C 709 , but see 22 C W N 931 A magistrate is not competent to proceed under s 145 of the Criminal Procedure Code, with regard to properties which form the subject matter of a pending suit under this section 13 C W N 530

(b) *Possession of Movable Property*

Recovery of specific moveable property

10 A person entitled to the possession of specific movable property may recover the same in the manner prescribed by Code of Civil Procedure.*

Explanation 1—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled

Explanation 2—A special or temporary right to the present possession of property is sufficient to support a suit under this section

Illustrations

(*a*) A bequeaths land to B for his life with remainder to C A dies B enters on the land, but C without B s consent, obtains possession of the title deeds B may recover them from C

(*b*) A pledges certain jewels to B to secure a loan B disposes of them before he is entitled to do so A, without having paid or tendered the amount of the loan, sues B for possession of the jewels The suit should be dismissed, as A is not entitled to their possession whatever right he may have to secure their safe custody

* See Act V of 1908

(*c*) A receives a letter addressed to him by B B gets back the letter without A's consent A has such a property therein as entitles him to recover it from B

(*d*) A deposits books and papers for safe custody with B B loses them and C finds them but refuses to deliver them to B when demanded B may recover them from C subject to C s right, if any, under section 168 of the Indian Contract Act, 1872

(*e*) A a warehouse keeper is charged with the delivery of certain goods to Z, which B takes out of A's possession A may sue B for the goods

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession

11 Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases —

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant ,

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ,

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss ,

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant

Illustrations

of clause (a)—A proceeding to Europe, leaves his furniture in charge of B as his [illegible] ty, pledges the furniture to C and [illegible] for sale C may

[illegible] and of which

[illegible] ad painter and a pair of rare China [illegible] s are of too special a character to bear an ascertainable market value B may be compelled to deliver them to A

Notes —*Vide* 29 M L J 342

CHAPTER II

Of the Specific Performance of Contracts

(a) *Contracts which may be specifically enforced*

Cases in which specific performance enforceable

12 Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced—

(*a*) when the act agreed to be done is in the performance, wholly or partly of a trust ,

(*b*) when there exists no standard for ascertaining the actual damage caused by the non performance of the act agreed to be done ,

(*c*) when the act agreed to be done is such that pecuniary compensation for its non performance would not afford adequate relief , or

(*d*) when it is probable that pecuniary compensation cannot be got for the non performance of the act agreed to be done

Explanation —Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer immovable property can be thus relieved

Illustrations—

of clause (*a*) —A holds certain stock in trust for B A wrongfully disposes of the st [illegible]

B [illegible]

[illegible]

cannot be adequately compensated for by money , and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf

A contracts to sell and B contracts to buy, a certain number of railway shares of a particular description A refuses to complete the sale B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market and their possession carries with it the status of a shareholder which cannot otherwise be procured

A contracts with B to paint a picture for B who agrees to pay therefor Rs 1,000 The picture is painted B is entitled to have it delivered to him on payment or tender of the Rs 1,000

of clause (*d*) —A transfers without endorsement, but for valuable consideration, a promissory note to B A becomes insolvent and C is appointed his assignee B may compel C to endorse the note, for C has succeeded to A s liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless

Specific performance—of any contract may, in the discretion of the Court, be enforced when the Act agreed to be done is such that pecuniary compensation for its non performance would not afford adequate relief (U B R 1897 1907 Vol II 539) , The Courts are reluctant to refuse specific performance for unilateral mistake alone 7 Bom L R 319 The provisions of ss 12 and 21 (a) of the Act contemplate a relief *in specie*, that is, the performance of a specific act or the delivery of particular articles, and not the payment of money, unless the contract is for the delivery of particular coins 4 Rang 227=97 Ind Cas 1032

Suit for execution of a fresh bond—A suit is not maintainable for the execution of fresh bond for money, where the original bond handed over to the defendant for registration is either withheld or destroyed by him 5 A 44

A suit by a mortgagee to obtain possession of property on failure of payment of interest in accordance with the terms of the deed is not a suit for specific performance within the meaning of this section 10 O C 218

Where pecuniary compensation was adequate relief a suit for injunction was dismissed 11 Ind Cas 807

Sale of land—In case of contract to sell land there is nothing to prevent the Court from decreeing specific performance of the contract 27 Ind Cas 732

Contract of which the subject has partially ceased to exist

13 Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject matter, existing at its date, has ceased to exist at the time of the performance

* The first illustration is repealed by Act II of 1882 (The Indian Trusts Act) as to the territories respectively administered by the Governor of Madras in Council, the Lieutenant Governor of the North Western Provinces, and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam The illustration will, when the said Act II of 1882 is extended to other repealed in such territories

Illustrations

(a) A contracts to sell a house to B for a lakh of rupees The day after the contract is made the house is destroyed by a cyclone B may be compelled to per

archase money

payable by B, A contracts to grant an

contract has been made, B is thrown

may be compelled to pay the purchase money

14 Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency

Specific performance of part of contract where part unperformed is small

Illustrations

(a) A contracts to sell B a piece of land consisting of 100 bighas It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to a part with them The two bighas are not necessary for the use or enjoyment of the 98 bighas nor so important for such use or enjoyment that the loss of them may not be made good in money A may be directed at the suit of B, to convey to B the 98 bighas and to make compensation to him for not conveying the two remaining bighas, or B may be directed, at the suit of A, to pay to A on receiv [illegible] the stipulated purchase money less

house and lands for two lakhs

should be taken at a valuation

he contract notwithstanding the

e furniture and may either have the furniture valued in the suit and include it in the decree for specific performance or may confine its decree to the house

Notes—A agreed to sell land included in a sale proclamation, a portion of which was subsequently sold *Held* that specific performance cannot be enforced 10 Ind Cas 678

15 Where a party to a contract in unable to perform the whole of his *part of it, and the part which must be left unper*formed forms a considerable portion of the whole or does not admit of compensation in money, he is not entitled to obtain a decree for specific *performance But the Court may, at the suit of the other party,* direct the party in default to perform specifically so much of his part of the contract as he can perform provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant

Specific performance of part of contract where part unperformed is large

Illustrations

(a) A contracts to sell to B a piece of land consisting of 100 bighas It turns out that 50 bighas of land belong to A, and the other 50 bighas to a stranger, who refuses to part with them A cannot obtain a decree against B for the specific performance of the contract, but, if B is willing to pay the price agreed upon and to take the 50 bighas which belong to A, waiving all right to compensation either for the deficiency or for loss substained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase money

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees The garden is important for the enjoyment of the house It turns out that A is unable to convey the garden A cannot obtain a decree against B for the specific performance of the contract, but if B is willing to pay the price agreed upon and to take the

estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase money

... the discretion of the Court and ... in this section (45 Ind ... cial grounds (23 M L J ... devoid of legal effect, and ... a contract to sell land by ... to the whole property 22 ... part performance

...

contract between the parties, a Court cannot decree specific performance ... Cas 504 The latter part of this section is a clear departure from the ... formance of part of a contract ... vendor not being ... the vendee can ... by vendor 102 Ind Cas 755, 91

16 When a part of a contract, which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part

Specific performance of independent part of contract

Notes —*Vide* 53 Ind Cas 283, 24 C 832, 114 Ind Cas 192

17 The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections

Bar in other cases of specific performance of part of contract

Notes —*Vide* 7 Ind Cas 393

18 Where a person contracts to sell or let certain property having only ... title thereto the purchaser or lessee ... by this Chapter)

Purchaser ... vendor with ...

(*a*) ... or lease, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest,

(*b*) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence,

(*c*) where the vender professes to sell unincumbered property, but property is mortgaged for an amount not exceeding the purchase money, the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgage

(*d*) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and cost on the interest of the vendor or lessor in the property agreed to be sold or let

Clause (*a*)— ... but subsequently it becomes perfec ... contract specifically *Vide* 37 Ind Ca ... ircener agrees to sell his share in spe ... ntly at the time of partition different property was allotted to him, the purchaser in not entitled to substituted property 37 M L J 620 Though a sale of reversionary interest does not at the time affect a transfer of the property, it creates a right which can be enforced when it falls into his possession 13 P R 1899

Clause (*b*)—*Vide* 8 Ind Cas 1184 ; 92 Ind Cas 715

Clause (*c*)—Where a mortgage ... chaser has a right under this ... brance upon the decree 9 C ... undisclosed encumbrances but ... charge encumbrances before sale

19 Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for such performance

Power to award compensation in certain cases

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been brol... that ...

granted, but that it is not sufficient to satisfy the justice of the case, and that ... compensation for breach of the contract should also be made to the ... ccordingly ... be assessed in such manner

Explanation —The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section

Illustrations—

... ndred maunds of rice to B ... to pay compensation The ... ict and has broken it, without ... is not the proper remedy It

... him a house for Rs 1 000, the ... January 1877 A fails to perform his part of the contract, and B brings his suit for specific performance and compensation which is decided in his favour on the first January, 1878 The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal

... of the explanation —A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent Before the hearing of the suit the patent expires The Court may award A compensation for non performance of the contract

... he directors of a ... number of shares ... of the resolution ... The Court may,

Notes.—Where the contract is not specifically enforceable by virtue of s 21 (a) of the Act, the plaintiff is entitled to compensation under s 19 though there is no specific prayer for it in the plaint. 51 Ind Cas 908; see also 42 Ind Cas. 521; 23 M L J 610, A W N 1881, 22; 95 Ind Cas 700, 28 Bom L. R 126 Where lease fails, *selami* may be claimed as damages in a suit for specific performance. 8 C 963

Liquidation of damages not a bar to specific performance

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

[illegible] under C, and that [illegible] case and that, [illegible] to apply for the [illegible] titled to have the

Contracts not specifically enforceable

21. *The following contracts cannot be specifically enforced —

(*a*) a contract for the non performance of which compensation in money is an adequate relief,

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms,

(*c*) a contract the terms of which the Court cannot find with reasonable certainty,

(*d*) a contract which is in its nature revocable,

(*e*) a contract made by trustees either in excess of their powers or in [illegible]

[illegible] a corporation or public company [illegible] promoters of such company, which is [illegible]

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;

(*h*) a contract of which a material part of the subject matter, supposed by both parties to exist, has, before it has been made, ceased to exist

And, save as provided by the Code of Civil Procedure,† "and the Indian Arbitration Act, 1899"‡ no contract to refer "present or future differences,"§ to arbitration shall be specifically enforced, "but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit" ||

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* The last thirty seven words of this section shall not apply to any submission or arbitration to which the provisions of Act IX of 1849 for the time being apply —See s 3 of Act IX of 1899

† See Act V of 1908

‡ The words quoted were inserted by the Indian Arbitration Act (IX of 1890) s 21.

§ The words within quotations were substituted for the words "a controversy" [illegible]

[illegible] tion or arbitra- [illegible] the time being [illegible] bitration, or to [illegible] 2nd Schedule

Illustrations

to (*a*).—A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent loan of the Government of India

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest :

In consideration of certain property having been transferred by A to B B contracts to open a credit in A's favour to the extent of Rs 10,000, and to honour A's drafts to the amount

... n the first and second, ... mpensation in money ... literary work

... ion to be made by *two* valuers, one to be named by A and the other by B A and B each name a valuer, but, before the valuation is made, A instructs his valuer not to proceed

By a charter party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two thirds on delivery of the cargo in London

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract, grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery

A contracts with B that, in consideration of Rs 1,000 to be paid to him by B, he will paint a picture for B

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for specified term, at a specified rent, 'if the drawing room is handsomely decorated,' even if it is held to have so much certainty that compensation can be recovered for its breach

A contracts to marry B

... for specific perform ... being undefined

... act not ... not be ... t once

to (*e*) —A is a trustee of land with power to lease it for seven years He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term This contract cannot be specifically enforced

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders

They contract to sell it without any such sanction This contract cannot be specifically enforced

Two trustees, A and B, empowered to sell trust property worth a lakh of rupees, contract to sell it to C for Rs 30,000 The contract is so disadvantageous as to be a breach of trust C cannot enforce its specific performance

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property They take no proper precautions to ascertain the value of such property—and in fact agree to pay an extravagant price therefor They also stipulate that the vendors shall give them a bonus out of the ...

... This contract cannot be specifically enforced

to (*g*)—A contracts to let for twenty one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms and might require A to supply the necessary engine power, and that A should, during the term keep the whole railway in good repair Specific performance of this contract must be refused to B

to (*h*)—A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract C, though supposed by A and B to be alive, was dead The contract cannot be specifically performed

Scope—This section is limited by paragraph 22 of Schedule II of C P Code and does not apply to any agreement to refer to arbitration or to any award governed by Schedule II 64 Ind Cas 204

Clause (*a*)—Agreement to purchase a money claim cannot be specifically enforced 9 L W 471 A suit by a mortgagor for the recovery of the balance of the mortgage money does not lie The proper remedy is an action for damages for breach of contract 43 C 59=19 C W N 1332, see also 30 A 252, 11 O C 217, 2 M 79 So a suit for specific performance of an agreement to pay a certain sum of money by instalments is not maintainable, as compensation in money for the non performance of it is an adequate relief 8 A L J 1282 Where the suit is one to enforce a contract to lend money upon a mortgage it cannot be specifically enforced 8 O C 5 A suit to recover money due on an award with interest thereon is not a suit for specific performance (28 B 1)

Clause (*b*)—A contract by a lessee for the preparation of a set of *jama wasil* [illegible]

Clause (*c*)—An agreement contained in a lease to pay a particular rate of rent which is so vague as not to make it clear what the intention of the parties was cannot be enforced 55 Ind Cas 923 So also where there is no complete agreement between the parties as to the essential terms of a proposed contract of lease, the alleged contract cannot be specifically enforced 18 Ind Cas 911 But there may be a completed agreement though a document has to be executed embodying its terms 46 C 771=23 C W N 563 see also 24 Bom L R 466

Clause (*d*)—The contract to give in marriage cannot be specifically enforced where the parties are Hindus 1 C 24, 24 W R 207, 7 B H C R 122, 21 B 23

Clause (*e*)—If the property intended to be leased, is trust property, and the proposed lease is beyond the authority of the trustee lessor, the lease cannot be specifically enforced 16 Ind Cas 390, see also 5 M 337, 2 C L J. 321, 11 C L J 346

Clause (*f*)—Under this section and section 57 of the Act, a Limited Company cannot be restrained by injunction from dispensing with the services of Managing Agents, even when the contract of service provides that the Managing Agents are only to be removed in specified manner and after a specified period 16 C W N 289, see also 34 C 1030, 12 C W N 50, 30 M 290, 27 B 618, 29 M 360, 27 A 592 where the case relates to Municipal Corporation

Clause (*g*)—*Vide* 28 P L R 1205

Contract to refer to arbitration—The provisions of Act IX of 1899 apply to a case where a suit could be instituted in a Presidency Town if the matter submitted to arbitration were the subject of a suit Consequently the last 37 words of the section do not apply to an agreement to refer to arbitration in such a case 15 Ind Cas 402 Sub section (1) of s 89 of the C P Code read with para 22 of the second [illegible]

Cas 220 A contract in order to bar a suit must be an operative and subsisting contract 8 A L J 66=33 A 315 (F B) see also 44 Ind Cas 225, 24 M L J 15 During the pendency of a suit the parties are not at liberty to refer the matter to arbitration 15 Ind Cas 150, 50 P R 189 But see 27 A 53, 4 A 546, U B R

(189 1901, vol II p 541) The burden of proving a bar under th s section is on the defendant, who pleads such a bar 9 Ind Cas 736 Refusal is essential to bring a case within this section U B R (1897 1901 vol II p 542) The fil ng of a su t is not a refusal within the meaning of this section 12 C W N 362, 5 C 498 8 A 57 See also 11 B 199, 23 C 956 23 C 256 80 P R 1906 The effect of th s section while
a right to have
a substantive right
s 22 of the C P
hat all matters in
not open to that
cause 17 C W
lly made is not a
refusal to perform the contract to refer within the mean ng of th s section 19 P R 1896

The wording of s 21 of the Specific Relief Act is wide enough to include con tracts to refer any matter which can legally be referred to arbitration One of such matters is a suit which is proceeding in Court 9 A 168 see also A W N 1904 9
less the
to run
pt ble of

(c) Of the Discretion of the Court

22 The jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal

Discretion as to decreeing specific performance

The following are cases in which the Court may properly exercise a discre tion not to decree specific performance —

I Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant though there may be no fraud or misrepresentation on the plaintiff s part

Illustrations

(*a*) A a tenant for l fe of certain property, ass gns his interest there n to B C contracts to buy, and B contracts to sell that nterest Before the contract is
wh ch he dies the day af er
nt or equally aware of the
If B knew the fact and
refused to B
erta n stock in trade It is
it should turn out that C s
st depends on the result of
debt to h s partners Th s
indebtedness is known to A but not to B Specifi performance of the contra t should be refused to A

(*c*) A contracts to sell and B contracts to buy certain land To protect the land from floods it is necessary for its owner to maintain an expensive embankment B does not kno v of this circumstance and A conceals it from him Specific perform ance of the contract should be refused to A

(*d*) A s property is put up to auction B requests C A s attorney to b d for h m C does this inadvertently and in good faith The persons present seeing the vendor s attorney b dd ng think that he is a mere puffer and cease to complete The lot is knocked down to B at a low price Specific performance of the contract should be refused to B

II Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non performance would involve no such hardship on the plaintiff

Illustrations

(e) A is entitled to some land under his father's Will on condition that if he sells it within twenty five years, half the purchase money shall go to B A, forgetting the condition, contracts, before the expiration of the twenty five years, to sell the land to C Here the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C

(f) A and B, trustees, join their beneficiary, C in a contract to sell the trust estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject The purchase money is not nearly enough to discharge those incumbrances though, at the date of the contract the vendors believed it to be sufficient Specific performance of the contract should be refused to D

... hat he, A,
valuable
contract

it from a
nnot make the road without
f the part of the contract
it may be held that he is
ation for loss of the road
that at any time during
e to take the machinery and
the articles specified in his
notice delivered to him at a valuation on the expiry of the lease Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B

The contract is silent as to access
to exist Specific performance of

factory, and not elsewhere all the goods of a certain class used by A in his trade The Court cannot compel B to supply the goods, but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere Specific performance of the contract should be refused to B

The following is a case in which the Court may properly exercise a discretion to decree specific performance —

III Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance

Illustration

A sells land to a railway company, who contract to execute certain works for his convenience The company take the land and use it for their railway Specific performance of the contract to execute the works should be decreed in favour of A

a Court of Equity for a
esirous prompt and eager
this section but the first
scretion must be read as
section which points out
d is not intended to be
which is embodied in the

234; 14 C L J 672=10 Ind Cas 503 In every suit for specific performance Courts of Equity have a free discretion limited only by those general principles which require all Courts of Justice to act in accordance with sound judicial principles and not upon mere caprice and sentiment What the Court has to look to is whether in the exercise of its discretion the agreement is one, which ought to be specifically enforced having regard to this whether enforceing the contract would not inflict more injury upon the defendant than confer benefit on the plaintiff 17 Bom L R

303=40B 60, see also 98 Ind. Cas 193 Delay in instituting a suit for specific performance is not fatal to the suit, unless it can be shown that the delay has in any way prejudiced the defendant 17 Ind Cas 399, 22 M. L J 518 But under certain circumstances delay is fatal 37 Ind Cas 776

Hardship—Decree for specific performance should be refused when it will involve hardship on one of the parties 10 A L J 498=17 Ind Cas 732 A contract may be perfectly valid according to the Contract Act, but there may be want of equality or fairness in the contract, which will entitle a Court of Equity to refuse specific performance even though there be no actual fraud The fairness of the contract has to be gathered not merely from the terms of the contract but also from the surrounding circumstances 18 C W N 689

Delay—The granting of a decree for specific performance is discretionary, and he who asks for it must show that he has acted with diligence and good conscience If he delays in asking for it till just before his suit would be barred by limitation he is not entitled to an exercise of the discretion in his favour 58 Ind Cas 23 But mere delay in instituting suit for specific performance is not sufficient to defeat the plaintiff's suit. It must be of a character to give rise to an inference of the abandonment of the right or should disclose any prejudice to the defendant 4 Pat L W 192 *Delay which leads to the inference of waiver is fatal to such suits* 57 P R. 1919, see also 22 M L J 518, 17 Ind. Cas 399, 37 Ind. Cas 776; 15 S L. R 21; 24 Bom L R 434

Stranger—Stranger to a contract is not entitled to specific performance 18 M L T 247, 2 L W 920

(d) *For whom Contracts may be specifically enforced*

Who may obtain specific performance

23 Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(*a*) any party thereto,

(*b*) the representative in interest, or the principal, of any party thereto provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract or, where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(*c*) where the contract is a settlement on marriage or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder,

(*d*) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder man,

(*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant,

(*f*) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach,

(*g*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation

(*h*) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company

Clause (*a*) - [illegible] ... a contract can neither be boun[illegible]
ons (1 A. L J [illegible]
a stranger to [illegible]
contract or nea[illegible]
L R 544, 11 C L J 364

Clause (*b*)—Where rights originate in contract, Court must decide whether it was the intention of the promisor to make the contract personal to the promisee Personal quality mentioned in this clause need not necessarily be restricted to particular skill or learning but may include anything peculiar to a man or his descendants which would entitle them to special favour at the hands of the contracting parties 42 B 344=20 Bom L R 654 In case of contract of repurchase the vendor's heir can exercise the right 1 L B R. 25, see also 7 C W N 229 and 30 C 265

Clause (*c*)—Compromise of doubtful rights can be specifically enforced. 5 C. W. N 386; see also 23 M L J 355, 9 C L J 19, 19 M. L J 4, 29 A 37; 1 A L. J 329

(*e*) *For whom Contracts cannot be specifically enforced.*

Personal bar to the relief

24 Specific performance of a contract cannot be enforced in favour of a person—

(*a*) who could not recover compensation for its breach;

(*b*) who has become incapable of performing, or violates, any essential terms of the contract that on his part remains to be performed,

(*c*) who has already chosen his remedy, and obtained satisfaction for the

...notice that a settlement of the ... valuable consideration) had been made and was then in force

Illustrations

the contract

A contracts t ...

a material eleme ...

sent, fells the tree ...

A, holding lan ...

the land in an ...

the contract

A contract ...

finish the ho ...

house in repai ...

the contract ...

breach of it

to clause (*c*)—A contracts to let, and B contracts to take, a house for specified term at a specified rent B refuses to perform the contract A thereupon sues for, and obtains, compensation for the breach A cannot obtain specific performance of the contract.

... entitled to specific ... rights to refuse ... s the default he is ... (P C)

Contracts to sell property by one who has no title or who is a voluntary settler

25 A contract for the sale or letting of property, whether movable, or immovable, cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same,

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt ;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject matter of the contract.

Illustrations

(*a*) A, without C's authority, contracts to sell to B an estate which A knows to belong to C A cannot enforce specific performance of this contract, even though C is willing to confirm it

(*b*) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B B gives a general prospective assent in writing to any sale which the trustees may make The trustees then enter into a contract with C to sell him the land C refuses to carry out the contract The trustees cannot specifically enforce this contract, as in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt

(*c*) A, being in possession of certain land, contracts to sell it to Z On enquiry [illegible]

[illegible]

his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger A cannot enfroce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

Clause (*b*)—The words "reasonable doubt" in cl (b) of s 25 contemplate reasonable probability of litigation 2 Bom L R 50 Marketable title means a title free from reasonable doubt 24 Bom L R 978 This section is inapplicable to a case where an award has been partly performed 51 Ind Cas 999

(f) For whom Contracts cannot be specifically enforced, except with a variation

Non-enforcement except with variation

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely) —

(*a*) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ,

(*b*) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil ,

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it

Illustrations

[illegible] they purport to contract each to enter [illegible] separately [illegible] is inserted [illegible] Rs 1,000 [illegible]

(*b*) A sues B to compel specific performance of a contract in writing to buy a dwelling house. B proves that he assumed that the contract included an adjoining yard and the contract was so framed as to leave it doubtful whether the yard was so included or not The Court will refuse to enforce the contract, except with the [illegible]

[illegible] a wharf, together with a strip of A's land [illegible] contract, B proposed orally that he should [illegible] mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented B then signed the written contract A cannot obtain specific performance of the written contract, except with the variation set up by B

(*d*) A and B enter into negotiations for the purpose of securing land for B for his life with remainder to his issue They execute a contract the terms of which are [illegible] The contract so framed cannot be [illegible]

[illegible] or a certain term, at the rent of [illegible] repair The house turns out to be [illegible] down, and erects a new house in [illegible] 120 per mensem B then sues to enforce specific performance of the contract in writing He cannot enforce it except with the variations made by the subsequent oral contract

Notes —The principle of English Law that fresh consideration is necessary for a new contract after the breach of the prior one does not apply to India 29 M L J 125

(*g*) *Against whom Contracts may be specifically enforced*

Relief against parties and persons claiming under them by subsequent title

27 Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(*a*) either party thereto ,

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract ;

(*c*) [illegible] ler a title which, though prior to the contract [illegible] have been displaced by the defendant ,

[illegible] has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ,

(*e*) when the promoters of a public company have, before its incorporation, entered into a contract, the company · provided that the company has ratified and adopted the contract, and the contract is warranted by the terms of the incorporation.

Illustrations—

to clause (*b*)—A contracts to convey certain land to B by a particular day A dies intestate before that day without having conveyed the land B may compel A s heir or other representative in interest to perform the contract specifically

A contracts to sell certain land to B for Rs 5 000 A afterwords conveys the land for Rs 6 000 to C, who has notice of the original contract B may enforce specific performance of the contract as against C

A contracts to sell land to B for Rs 5,000 B takes possession of the land Afterwards A sells it to C for Rs 6 000 C makes no enquiry of B relating to his interest in the land B s possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C

A contracts in consideration of Rs 1 000, to bequeath certain of his lands to B, Immediately after the contract A dies intestate, and C takes out administration to his estate B may enforce specific performance of the contract against C

A contracts to sell certain land to B Before the completion of the contract, A becomes a lunatic, and C is appointed his committee B may specifically [illegible] the contract against C

to clause (*c*) —A the tenant for life of an estate with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement Befors the sale is completed A dies C may enforce specific performance of the contract against B

A and B are joint tenants of land, his undivided moiety of which either may alienate in his lifetime but which subject to that right, devolves on the survivor A contracts to sell his moiety to C and dies C may enforce specific performance of the contract against B

Clause (*b*) —Prior contract prevails against subsequent purchaser where he had notice of such contract 36 B 446 see also 38 M L J 29 The onus of proving that the subsequent purchassr is a *bona fide* purchaser without notice is on him 38A 184—46 Ind Cas 459, 44 Ind Cas 470, 3 Lah L J 447, 23 Bom L R 106 Where the contracted property has been devised the devisee is liable to execute the conveyance 22 Bom L R 1396 see also 44 Ind Cas 361, 38 A 184; 33 Ind Cas 121, 22 Ind Cas 250, 19 M L T 329 and 14 Ind Cas 28, 22 C L J 383, 30 M L J 559, 40 Ind Cas 128 43 Ind Cas 940, 40 Ind Cas 142

Paid his money in good faith —The words 'paid his money in good faith do not cover the case of a person who after the execution of his conveyance and [illegible] y to a third [illegible] ijustment of a [illegible] M L J 43 [illegible] cts one who would take a transfer of that property with notice of that tenant s right and if he chooses to make no enquiry of the tenant, he cannot claim to be a transferee without notice 18 C W N 341 22 Ind Cas 250 Notice [illegible]

27A * 'Subject to the provisions of this Chapter where a contract to lease immovable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract though required to be registered has not been registered, sue the other for specific performance of the contract if,—

Specific performance in case of part performance of contract to lease

(*a*) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract and

(*b*) where specific performance is claimed by the lessee, he has in part performance of the contract, taken possession of the property, or being already in possession continues in possession in part performance of the contract, and has done some act in furtherance of the contract

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof

This section applies to contracts to lease executed after the first day of April, 1930'

(*h*) *Against whom Contracts cannot be specifically enforced*

What parties cannot be compelled to perform

28 Specific performance of a contract cannot be enforced against a party thereto in any of the following cases —

(*a*) if the consideration to be received by him is so grossly inadequate with reference to the state of things existing at the date of the contract, as to

* Section 27A has been added by Act XXI of 1929.

be either by itself or coupled with other circumstances, evidence of fraud or of undue advantage taken by the plaintiff,

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled,

(*c*) if his assent was given under the influence of mistake of fact, mis apprehension or surprise Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision and the contract may be specifically enforced in other respects if proper to be so enforced

Illustrations

to clause (c)—A, one of two executors, in the erroneous belief that he had the authority of his co executor, enters into an agreement for the sale to B of his tes tate ... ct oneer's aut ... sells the wh ... perform-ance of the agreement

Minor—There is nothing in this section to support the position that specific performance cannot be decreed against a minor 18 M 415

Reversionary interest—This section does not support the view that the Court would not decree specific performance of an agreement to sell a reversionary interest when the purchase money was less than the market value of the reversion 17 B 232

Clause (a)—The fact that the consideration is inadequate is not a bar to the granting of specific performance of a contract to sell immovable property when the price is not so grossly inadequate as to justify the inference of fraud having been practised 4 M L J 9

(*i*) *The effect of dismissing a Suit for Specific Performance*

Bar of suit for breach after dismissal

29 The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be

Notes—In a suit for specific performance where the specific performance is not decreed the alternative relief of refunding the money can be granted 17 C W N 100

(*j*) *Award and Directions to execute Settlements*

Applications of preceding sections to awards and testamentary directions to execute settlements

30 The provisions of this Chapter as to contract shall *mutatis mutandis*, apply to awards and to directions in a Will or codicil to execute a particular settlement

Scope—This section lays down that when the question is one of specific performance the Court has the same powers and should proceed upon the same principles in the case of award as in the case of a contract The way to consider the question is to take the terms of the award before the Court and to see whether if the same terms had ... or is not one in which ... be decreed 8 A L J ... provisions of Chapter ... into a contract 49 Ind Cas 62 An award made during pendency of suit out of Court can be specifically enforced (U B R 1st Qr Specific Relief p 3)

CHAPTER III

Of the Rectification of Instruments

31 When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention either party, or his representative in interest, may institute a suit to have the instrument rectified, and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may, in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value

When instrument may be rectified

Illustrations

(a) A intending to sell to B his house and one of three godowns adjacent to it executes a conveyance prepared by B, in which through B s fraud, all three godowns are included Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent neither C nor D having any knowledge of

o exclude
lease
ants with
d assigns
d official assignee
c hat the parties
a B and her chi
d no right to any
part of the annuity

Evidence Act 53 Ind Cas 379, see also 3 L W 551, 31 Ind Cas 671, 41 Ind Cas 747, 29 M L J 229, 14 Ind Cas. 407, 40 C 541, 8 Ind Cas 554, 3 L B R 227 But non payment or inadequacy of considerat on is not sufficient to justify cancellation of a deed of sale 13 M L T 521 No rectification is allowed when the mistake is not mutual but unilateral 8 O C 1 Where there is unilateral mistake, rectification is refused 26 C W N 36=34 C L J 256 Where the
of
But
uit

Contract—The use of the word contract in s. 31 is apt to mislead What the Court has to rectify is the instrument to do which it has jurisdiction to ascertain what the real contract was If that is established then the instrument purporting to embody it may be rectified 5 Bom L R 583

32 For the purpose of rectifying a contract in writing the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement

Presumption as to intent of parties

Principles of rectification

33 In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be

Specific enforcement of rectified contract

34 A contract in writing may be first rectified, and then if the plaintiff has so prayed in his plaint, and the Court thinks fit, specifically enforced

Illustration

A contracts in writing to pay his attorney, B a fixed sum in lieu of costs The contract contains mistakes as to the name and rights of the client, which, if construed strictly would exclude B from all rights under it B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties

CHAPTER IV

On the Rescission of Contracts

When rescission may be adjudged

35 * Any person interested in a contract in writing* may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases namely —

(*a*) where the contract is voidable or terminable by the plaintiff,

(*b*) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff,

(*c*) where a decree for specific performance of a contract of sale or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase money or other sums which the Court has ordered him to pay

When the purchaser or lessee is in possession of the subject matter and the Court finds that such possession is wrongful the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor

In the same case the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require

Illustrations

to (a)—A sells a field to B There is a right of way over the field of which A has direct personal *knowledge but which he conceals from B B is entitled to have* the contract rescinded

to (b)—A, an attorney, induces his client B a Hindu widow to transfer property to him for the purpose of defrauding B s creditors Here the parties are not equally in fault and B is entitled to have the instrument of transfer rescinded

Notes [illegible]
is that the [illegible]
than the de[illegible]
were both *p* [illegible]
a deceased contractor 51 B 133=29 Bom L R 115

Clause (c)—29 Bom L R 309=A I R 1927 Bom 239

Rescission for mistake

36 Rescission of a contract in writing* cannot be adjudged fore mere mistake unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made

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* In ss 35 and 36 the words 'in writing have been repealed by Act IV of 1882 (Transfer of Property) in territories in which this Act is in force

Notes—Where the contract is void on account of mutual mistake the plaintiff is entitled to money advanced by him 21 C W. N. 404, see also 14 C W N 101; 22 W R 529

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly

Alternative prayer for rescission in suit for specific performance

38 On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require

Court may require party rescinding to do equity

Notes—If a party to a contract seeks to enforce a contract which is void under s 12 of the Contract Act, it is not permissible to give equitable relief However, statutory relief can be given under this section and section 41 when rescission of contract is asked for on the ground of absence of capacity to contract in the other contracting party 10 Bom L R 1004

Contract by Lunatic—Contract of sale by a lunatic is void but purchaser is not entitled to get back the money paid 32 Ind Cas 804

Minor—Where money has been advanced to an infant on mortgage with full knowledge of his infancy a Court can in the exercise of discretion conferred on it ... party A Court of ... money in respect ... clared to be void

Sale void ab initio—Although the sale was void *ab initio* it being effected by persons who were not entitled to act on behalf of the vendor the vendee having regard to this section and section 41 is entitled to claim that the parties should be relegated to the position they were in 2 Lah L J 184

CHAPTER V.

Of the Cancellation of Instruments

39 Any person against whom a written instrument is void or voidable, ...

When cancellation may be ordered

able and the Court may, in ... delivered up and cancelled

If the instrument has been registered under the Indian Registration Act,* the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation

Illustrations

(*a*) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter to insure he ...

(*b*) A conveys land to B, who bequ ... possession of the land and produces a ... was made to L in trust for him C ... instrument

... land were all at will, sells it to B, and ... ary 1877. Soon after that day, ... dated the 1st October, 1876, ... an Registration Act* B may ...

* See now the Indian Registration Act, 1908 (16 of 1908)

pa d for by B s acceptances of ooo, to be drawn by A on B iot delivered according to the obtain the cancellation of all he bills

Test—The test for granting relief under this section is to find out whether the

elves in *pari delicto* el ef in enforcing a an illegal contract, 20 C W N 760

Who can sue—When the plaintiff has some interest in the land covered by a document sought to be declared forged he has a cause of action 23 Ind Cas 138 Under this section, any person against whom a written instrument is vo d or vo d able who has reasonable apprehension that such instrument, if left outstanding, may ellation thereof The test to be appl ed serious injury whether that exists or not ie particular case with which the Court

When a property in possession of the plaintiff but belonging to a third party has a cause of action or cancellation

ich is not effective until regis

ancellation is prayed on 18 Ind Cas 853

io can get a decree for possession, is not entitled to a decree for cancellation of the document which if genuine would disprove his title 34 A 140

Non pa ment of cons de a on of mo gagee

The executant of a sale-deed cannot obtain a declaration of his title to the property sc 6 Ind Cas 891 maintainable 10 C 123 rompt and without delay, 2

The form of specific relief under this section is founded upon the administration of a protective justice for fear 5 Bom L R 573=27 B 607

A receipt is an instrument under this section 5 Ind Cas 240

An entry of a balance in an account book is binding, as an acknowledgment The figures referred to in it are written instruments within the meaning of section 39 of the Act 12 P R 1890

Non payment or inadequacy of the consideration mentioned in a sale deed is not sufficient to justify the cancellation of the deed of sale 19 Ind Cas 746

The executant of sale deed cannot obtain a declaration of his title to the property sold, unless and until he first gets the sale deed set aside 6 Ind Cas 861

he simple l document and that Act 27 C 156=26 I A 216

What instrument may be partially cancelled

40 Where an instrument is evidence of different rights or different obligations the Court may, in a proper case, cancel it in part and allow it to stand for the residue

Illustration

A draws a bill on B who endorses it to C, by whom it appears to be endorsed to D who endorses it to E C s endorsement is forged C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects

Notes —A person who has assigned all his interest in property, cannot maintain a suit for the cancellation of a document apparently executed by him and affecting the same property 13 M 549

Where a suit is instituted for the cancellation of an instrument it is competent to the Court to cancel the instrument in part and allow it to stand for the rest 12 C P L R 13 see also 8 C L R 50

Power to require party for whom instrument is cancelled to make compensation

41 *On adjudging the cancellation of an* instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Object —The Court may, on adjudging the cancellation of a document, require the party to whom such relief is granted to make any compensation to the other which justice may require 28 B 181, see also 10 Bom L R. 1004

The fact that ss 64 and 65 of the Contract Act do not apply to the facts of a case does not exclude the application of this section 76 P R 1910

Minors —Under this section the Court has ample power on adjudging a cancellation of a mortgage debt in favour of the plaintiff to require the latter to make any compensat on to the other which justice may require 30 P JR 1913, see also 8 A L J 1058, 9 Ind Cas 124, 17 Ind Cas 7 29 Ind Cas 972 54 Ind Cas 846 7 L W 124 21 Ind Cas 904, A I R 1926 Mad 607, 94 Ind Cas 25 But when the vendee is aware of real facts *minor is not bound to refund* 22 Bom L R 40

CHAPTER VI *

OF DECLARATORY DECREES

42 Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion, make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief

Discretion of Court as to declaration of status or right

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere *declaration of title, omits to do so*

Bar to such declaration

Explanation —A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence and for whom, if in existence, he would be a trustee.

Illustrations

(*a*) A is lawfully in possession of certain land The inhabitants of a neighbouring village claim a right of a way across the land A may sue for a declaration [illegible]

[illegible] divided amongst [illegible] their surviving [illegible] s executor the Court may declare whether B, C and D took the property absolutely or only for their l ves and it may also declare the interests of the children before their rights are vested

(*c*) A covenants that if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts Before any such property

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* As to the Punjab, see also the Punjab Land Revenue Act, 1887 (17 of 1887), s 45, Punj N W Code.

accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty The Court may make the declaration

(d) A ... a life interest The aliena- ... r The Court may, in a suit

... alienates part of the property of which she is in possession as such The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity, and was therefore void beyond the widow s lifetime

(f) A Hindu widow in possession of property adopts a son to her deceased husband The person presumptively entitled to possession of the property on her death without a son may in a suit against the adopted son, obtain a declaration that the adoption was invalid

(g) A is in possession of certain property B, alleging that he is the owner of the property requires A to deliver it to him A may obtain a declaration of his right to hold the property

(h) A ... B's wife and her children, if ... C B has a puta tive wife D ... fully married D and her chi... may, ... lifetime institute a suit against C and obtain therein a declaration that they are truly the wife and children of B

Scope—This section does not sanction every form of declaration but only a declaration that the plaintiff is entitled to a specific legal charcter or right as to property 18 C W N 106 Courts in this country should see that plaints which pray for declaratory decrees duly conform to the terms of this section 39 C 704 The section is not exhaustive of cases in which declaratory decrees can be made 58 Ind Cas 585 Suit for a declaration that property seized in insolvency proceedings belong to the plaintiff is misconceived 15 A L J 661 An attaching creditor can file a suit under this section praying for a declaration that the property belongs to his judgment debtor 33 Ind Cas 124 So also a creditor of an insolvent can have a declaration that his mortgage has priority over other mortgages 36 Ind Cas 1004 In a benam ... purchaser for a declaration to the effe ... 5 Ind Cas 810 A declaratory decree ... thorising an act which is *per se* a crimina ...

A suit for declaration that ... and void under the law is not ... ot allow a pre emptor to enfo ... e 48 C 110 P C = 25 C W ... tory decree that an autho- rity ... ade 98 Ind Cas 681 An election may be challenged under this section where a right has been denied to a person ... payer who is not a voter is ... 926 Where the election ... elected can not be granted ... W N 977

A person in joint possession of land can maintain a suit for mere declaration of title 21 Ind Cas 719 24 Ind Cas 678 No suit is maintainable to have a declaration that certain decree is *ultra vires* and void 59 Ind. Cas 566 A suit for a declaration that mutation of land in defendant s name is null, is maintainable 24 Ind Cas 678 A declaration that a certain person is not a proprietor but an under proprietor is legal 42 Ind Cas 194 A declaratory suit against an order under section 488 of the Cr Pro Code can be brought under this section 26 Ind Cas 526 100 P L R 1903 When the property is in the possession of the defendant, and the plaintiff cannot ask for ejectment a suit for declaration of title is the only remedy 20 C L J 23 Declaration if it be infructuous, should not be made 50 Ind Cas 857 A purchaser from a Hindu widow can claim a declaration that he is entitled to her rights 16 Ind Cas 205 A creditor of an insolvent can have a declaration that certa n prope ... d Cas 421 In a declaratory su ... defendant may not pretend ... O C 170. Where a reversione ... xecuted by

the limited owner such a declaration cannot be denied to him 45 C. 510 (P.C.), 19 C W N 1191. But the right to sue for a declaratory relief by a reversioner that an alienation by a widow is not binding comes to an end with the widow's death 18 Ind Cas ... present legal right ; ... ion as to a right ... of an authority to ... under this section ... at one of the rival ... get a declaration after the death of the testator, that his Will is void 36 Ind Cas 95 A suit by a reversioner that after the death of the widow he is entitled to succeed is not maintainable 44 M I

A Court will not grant a declaration of plaintiff's right to an unknown and uncertain share in joint property 40 C L J 30=82 Ind Cas 392 ; see also 1974 P 706 A person claiming under an invalid gift is not entitled to a declaration of his title 2 Pat L R 273

The object of the section is really to perpetuate and strengthen the testimony regarding the title of the plaintiff so that adverse attacks upon it may not weaken it The policy of the legislature ... the property taken away fr ... property peacefully, in other ... he is entitled to seek the ... This section is intended to provide a remedy only where no other remedy exists A W N 1885 176 Legal character is wide enough to include the right of franchise and also the right of being elected as a Municipal Commissioner 24 C 107 A stranger to a contract cannot be a party to suit 5 B 177 An improper or irregular exercise of the discretionary power conferred on a Court by this section does not in itself constitute a sufficient ground for the reversal of a decree which is not open to any objection upon the ground of jurisdiction or of the merits of the rights of the parties 9 ... ction holds that a suit has been instituted ... stay the suit or to dismiss without pr ... wer to prevent abuse of its process 28 I ... *od of limitation* should not be held to be a good ground for refusing relief under this section 21 M 42 Where a suit under this section has been dismissed on the ground that the plaintiff is not in possession, it will not bar a subsequent suit for recovery of possession under s 43 of the Civil Procedure Code 14 A 512 Where the property is in possession of the Collector under section 146 of the Criminal Procedure Code, a suit under this sect on by a party to the proceeding is competent 15 C W N 758 Uuder this section any person whose title to any right as to any property is denied can sue for a declaration of his title if he does not omit to seek further relief which he may be able to ask 15 B 309 A suit for the declaration of an abstract right cannot be maintained 7 Ind Cas 318 A person who claims title as well as possession is not allowed to have a declaration for possession only. 48 P R. 1892, 80 Ind. Cas 544

This section will not grant relief to any plaintiff who claims declaration by virtue of his possession against a person who has no title 12 P R 1888 (F. B)

Where there is no denial of right no suit for declaration would lie 6 Bom L R 283 *If any person has thrown a cloud in plaintiff's title by recovering rent decrees* against his tenants he can sue under this section 14 C W N 576 Where the tenant's name has been wrongly recorded in a *khewat* the landlord can sue under this section 1 Ind Cas 665 A suit for a declaration that a customary right does not exist entitling the defendants to take a certain portion of the fruit crops in a ... A W N 1885, 223 A suit ... null and void is ... der this section is ... Act 7 A L J ... a Hindu widow could only be brought by the nearest reversioner 20 B 202, 105 Ind Cas 154

A suit for a declaration that the plaintiff as the adopted son of the first defendant ... trust is not sustainable ... made by the plaintiff has ... o the prejudice of the ... true, that is such an

infringement of the plaintiff's right, if he is a sole owner, as to entitle him to sue for and obtain a declaration that the defendant, the alleged adoptee, was never taken by him, the plaintiff, in adoption 29 M 48 Where the guardianship of a minor ... uardianship ... t maintain- ... mple and ... 8 Where ... refused to ... as entitled ... unicipality ... denied nor ... establish 30 B 405

There is nothing in this section to exclude verbal denials of a title from its scope. 104 Ind. Cas 803

The right of the presumptive reversioner to sue for declaration under this section ... by the widow herself as are referred to in ... uch reversioner bound to show collusion, ...

obtain ... 1881 39 ... impeach ... 1882 ... dings u ... bring a ... disallow ... having declaration that the said mosque is *wakf* property 32 A 631 A person to be entitled to bring a suit in respect of *wakf* property must have a beneficiary interest as a *wakf* 24 B 170 In the absence of an allegation that the widow and nearer reversioner have colluded a suit by remote reversioner is not sustainable 8 O C 81 A suit by a revesioner for a declaration that the person alleged to be the daughter of the deceased is not the daughter of the deceased is competent A W N 160, see also 8 A L J 454, 205 P R 1889

Discretionary—Under this section a claim for a declaratory decree is not a matter of right but rests with the judicial discretion of the Court 26 A 238 P C, 5 C W N 445, 6 Bom L R 495 P C, 1 A L J 512

The expression "legal character" means a positive character recognized by law 10 C P L R 1

A suit for the construction of a Will is maintainable only when some immediate ...

A suit by a remote reversiner is c ... quishment by the widow in favour of the ... in certain property is not binding up ... suceeding to the estate held by the ... R 198 A reversioner's ... only when the alienation ... where she may alienate ... this section a suit for ... not be maintained 6 ... y arise in future is not ... L J 11 The right to hold a house free of charge is a continuously existing and a very real though incorporeal "property" and so a suit can be brought for a declaration that certain non-proprietory residents of a village are entitled to hold their houses in the village *abadi* free of any demands on the part of the proprietors for fees and dues 48 P R 1887 The purchaser of a mortgaged property may institute a suit for declaration that sale

deed set up by the mortgagee is fraudulent and invalid as against him 9 M L J 165 When a party seeks from the Court a declaratory decree, it lies upon him to make out his title affirmatively 24 A 170 Usufructuary mortgagee can sue under this section if the property be sold ... the mortgage of several ... A suit to declare that ... liable to be dismissed becau... n the plaintiff is not ... Ind Cas 867 A suit to have the ... in his possession 7 ... ve ... of

... of a Hindu can maintain a suit for declaration of the invalidity of an adoption 4 Lah L J 37

A suit to have an award declared not binding is maintainable before the filing of the award in Court 4 Lah L J 12 Tenants are not entitled to declaration against their landlord 4 Lah L J 207 Where neither party is able to prove its title to the property, plaintiff, who is in possession for nearly 12 years can bring a suit under this section 64 Ind Cas 400 Where the property is in possession of the Court of Wards a suit for mere declaration ... 666 A s... 16 A L J ... a memb... defendant and ... tial relie... some consequen- ... paying r... in a revenue ... 2 ... rred by this section 41 A ... t ... that it is barred by proviso ... has failed to claim 36 M L J 624 A suit ... ought to seek further relief ... by a prior mortgagee for a mere declaration is not allowed 15 Ind Cas 221 A suit for a bare declaration of occupancy right is not competent 4 L W 402 A suit for a declaration that a Will is a forgery and for its delivery to be cancelled by the Court is competent 34 A 140 This section does not contemplate an action by a person having no title 45 Ind Cas 303, 35 Ind Cas 441 A suit by the guardian of a Mahomedan girl for a declaration that her marriage is invalid is not competent under this section 27 C L J 603 To ... his legal character or his ... r if not denied, that the ... As declaratory suits are exceptional forms of litigation the power conferred by this section to ...

A suit ... ot pray for a declaration as regards ... of her sons 23 C W N 171 ... maintain a suit for a declaration ... tion of a right to continue pay ... the first ... 80 Where ... in ... and ... ion ... is ... A person who sues for a ... s is incorrect must show ... h the easement exists ... municipal commissioner ... tiff sues as reversioner ... widow and the aliena... rt to grant a declaration that the ... The denial of right referred to in ... in order to give him a cause of ... contingent right cannot sue 18 ... ion that his brother a lunatic, is entitled to a share in a mor... defendants in their own names ... r this section 11 Ind Cas 231 ... le merely because some casual ... reversionary rights are denied, ... section 33 Ind Cas 183 A ... title is in jeopardy from the

aggression of a neighbouring zamindar 13 C L J, 284 A reversioner disputing an alienation by the widow cannot pray for declaration that he is entitled to inherit the property after the death of the widow 30 Ind Cas 815

A reversioner cannot claim a declaration when the widow's property has only been attached 32 Ind Cas 157 When a Hindu reversioner mortgages widow's property the latter can claim a declaration under this section 33 A 430 Where a Hindu widow sets up a Will giving her power to adopt, a reversioner can pray for a declaration that he is the next reversioner and the Will is not genuine 42 M [illegible] suit on the ground that the defendant [illegible]

interested in denying [illegible] defendant within this section 25 Ind Cas 104 This section while indicating the character of the right which may be declared by a Court of law, leaves it to the [illegible] ned 35 M L J 144 A [illegible] a portion of the occupancy [illegible] Declaration that a certain [illegible] endant landlord is bound to [illegible] the Court 18 C W N [illegible] party to the fraud 17 Ind Cas 602 The Court has in all circumstances a discretion to grant or refuse relief under this section 44 C 384, see also 25 C L J 537, 35 M L J 169, 5 Pat L J 66, 23 Ind Cas 809, 25 Ind Cas 603 The discretionary power which Courts possess to grant declaratory decrees should be exercised to put an end to disputes which have lasted a considerable time 39 M L J 115 The grant of declaratory relief is a matter within the discretion of the Court and a Court of appeal should be slow to interfere in cases where this discretion has been exercised by the Courts below 25 Ind Cas 908 An alienation made by a transferee of a Hindu female with limited interest furnishes the next reversioner with a cause of action to bring a suit under this section 41 A 492

Further relief—The further relief referred to in the proviso to this section is further relief in relation to the legal character or right to any property to which the plaintiff is entitled and whose title to such character or right the defendant denies or is interested in deying and must be relief appropriate to and consequent on the right or title asserted 15 Ind Cas 552, 16 Ind Cas 211, 14 Ind Cas 510, 45 Ind Cas 859 Where the plaintiff being able to sue for an injunction omits to do so the Court cannot grant a mere declaration of title 2 L B R 124 Where one of two plaintiffs is not in possession and the other is in possession through defendant a suit under this section is not maintainable 5 A L J 640 The object of the proviso is to prevent a plaintiff from getting a declaration in one suit and a consequential relief afterwards in another 4 L B R 263 In order that a suit can be held to be unmaintainable by the application of this section it must be shown that the defendant was in possession and as against him the plaintiff could have obtained an order for delivery of possession 10 M L T 277 A plaint praying for a declaratory decree that an order of Government cancelling the separate registration of portion of an estate, but without seeking consequential relief is not bad under this section 3 C W N 161=26 I A 16 But the effect of an order under s 59 of the Land [illegible] of settling the actual [illegible] o ask not only for a [illegible] also for a consequ [illegible] in be granted even when the plaintiff's possession is disturbed 20 C W N 1274 When the plaintiff is out of possession of the property which is a mere waste land a suit under this section is barred 36 A 312 When a person can bring a suit for redemption a suit for declaration will not lie 2 Pat L W 223, see also 24 Ind Cas 737 A declaratory suit by the real owner that mortgage effected by a person in possession is not effective is competent without prayer for cancellation of the mortgage deed 11 Ind Cas 885 The subject matter of an interpleader suit cannot be brought in a form of declaratory relief 15 C L J 653 Where the tenants are in possession and they are ready to pay rent to any one declared by the Court to be the legal owner a suit for mere declaration and injunction is competent 36 M 364 A right of pre emption cannot be enforced by a declaratory decree 39 M L J 195=25 C W N 289 (P. C) When possession is partly with plaintiff and partly with

deed set up by the mortgagee is fraudulent and invalid as against him 9 M L J 165 When a party seeks from the Court a declaratory decree, it lies upon him to make
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A suit to have an award declared not binding is maintainable before the filing of the award in Court 4 Lah L J 12 Tenants are not entitled to declaration against their landlord 4 Lah L J 207 Where neither party is able to prove its title to the property, plaintiff, who is in possession for nearly 12 years can bring a suit under this section 64 Ind Cas 400 Where the property is in possession of the Court of Wards a suit for mere declaration is maintainable 37 A 185, see also 16 A L J
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om L R 113
A declaration for a right to receive alms is not competent under this section 18 A L J 983

A wife who was divorced 20 years before cannot pray for a declaration as regards the validity of her marriage and for the legitimacy of her sons 23 C W N 171 After the grant of the probate, a caveator cannot maintain a suit for a declaration that the Will is not genuine 43 C 594 A declaration of a right to continue payment of subscription to *Kury* does not lie 39 M 80 Where a suit is objected to in
consequential relief and
adverse decision
suit plaintiff is
son who sues for a
correct must show
easement exists
cipal commissioner
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w and the aliena
claration that the
ht referred to in
him a cause of
it cannot sue 18
ther a lunatic is
entitled to a share in a mortgage acquired by the two defendants in their own names 56 Ind Cas 191 A right to *britt* is no property under this section 11 Ind Cas 231
le merely because some casual
reversionary rights are denied
section 33 Ind Cas 183 A
title is in jeopardy from the

aggression of a neighbouring zamindar 13 C L J, 284. A reversioner disputing an alienation by the widow cannot pray for declaration that he is entitled to inherit the property after the death of the widow 30 Ind Cas 815

A reversioner cannot claim a declaration when the widow's property has only been attached 32 Ind Cas 157 When a Hindu reversioner mortgages widow's property the latter can claim a declaration under this section 33 A 430 *Where a Hindu widow sets up a Will giving her power to adopt, a reversioner can pray* for a declaration that he is the next reversioner and the Will is not genuine 42 M

the defendant
es from the date
22 Ind Cas
and has been
on against the
while indicating
leaves it to the
L J 144 A
the occupancy
holding is not binding upon him 49 Ind Cas 439 Declaration that a certain lease is p
is bound to
recognise
3 C. W N,
596 The
and 17 Ind
Cas 602
refuse relief
under this section 44 C 384, see also 25 C L J 537, 35 M L J 169; 5 Pat. L J 66, 23 Ind Cas 809, 25 Ind Cas 603 The discretionary power which Courts possess to grant declaratory decrees should be exercised to put an end to
115 The grant of
Court and a Court of
has been exercised
by the Courts below 25 Ind Cas 906 An alienation made by a transferee of a Hindu female with limited interest furnishes the next reversioner with a cause of action to bring a suit under this section 41 A 492

so to this section is
property to which the
defendant denies or
nsequent on the right
4 Ind Cas 510, 45
unction omits to do
so the Court cannot grant a mere declaration of title 2 L B R 124 Where one
hrough defendant
The object of the
and a consequ
ential relief afterwards in another 4 L B R 203 In order that a suit can be held to be unmaintainable by the application of this section it must be shown that the defendant was in possession and as against him the plaintiff could have obtained an order for delivery of possession 10 M L T 277 A plaint praying for a declaratory decree that an order of Government cancelling the separate registration of portion of an estate, but without seeking consequential relief is not bad under this section, 3 C W N 161=26 I A 16 But the effect of an order under s 59 of the Land

is out of possession of the property which is a mere waste land a suit under the section is barred 36 A 312 When a person can bring a suit for redemption a suit for declaration will not lie 2 Pat L W 223, see also 24 Ind Cas 737 A *declaratory suit by the real owner that mortgage effected by a person in possession* is not effective is competent without prayer for cancellation of the mortgage deed 11 Ind Cas 885 The subject matter of an interpleader suit cannot be brought in a form of declaratory relief 15 C L J 653 Where the tenants are

defendant a suit under this section is competent 21 Ind Cas 719; 30 Ind Cas 355, 55 Ind Cas 32 But see 48 Ind Cas 838

This section requires a plaintiff to include in his prayer all the reliefs he may claim against the same defendant but it does not require him to include as defendants the persons against whom he may have a right to consequential relief 59 Ind Cas. 809 The further relief in the proviso should be such relief as the plaintiff would be in a position to claim by virtue of the title he seeks to establish or be declared, 17 C L J 30 When a person is out of possession he must pay for possession in addition to a declaration of his right 8 A L J 464 The mere prayer for general

that
29
46 a
also

when the property is in the possession of a receiver a suit for mere declaration of plaintiff's title is competent 35 Ind Cas 17 A co sharer in possession can pray for a declartion of his right to his share of the property 21 C W N 375 Before

When
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suit
only

C L J 561 A suit by a mortgagor for a declaration that an endorsement on the bond is a forgery is not competent when the money payable under the bond has become due 39 A 103 A suit for the removal of a mohant and for a declaration that the plaintiff has the right to nominate successor is competent 37 Ind Cas 105

A prayer for confirmation of pos
L J 415 Suit for declration of rig

prayer for
Cas 552,
declaration
the mort-
sue under
cree there-
sequential

relief, and as such a suit under that section is unaffected by the proviso 4 B L R 88; *14 Ind Cas 510 The effect of the proviso is that the Court* shall not make a declaration in the events specified in the proviso, and not that the Court shall not grant the relief that is prayed 6 Bom L R. 124=28 B 332 The general power vested in the Court in India under the Civil Procedure Code to entertain all suits of civil nature, excepting suits of which cognizance is barred by any enactment for the time being in force does not carry with it the general

r is expressly conferred
edure Code, the plaintiff
no bar to the maintaina
e plaintiff is bound to
position to claim from
he seeks to establish
The proviso to s 42 is
to property without any
empower a Court to
er relief omits to do so
o Court shall make a

declaration 28 B 569, see also 29 B 19; 3 Ind Cas 161

Where the plaintiff is only entitled to have access to the temple and the use of articles kept therein for the purpose of performing worship he need not pray

for possession 14 M L J 290 A suit for a declaration that certain decrees have been collusively obtained is not barre [illegible]
M L J 254 A suit for declaration that the [illegible]
a *pagoda* where the defendants are in [illegible]
though a prayer for perpetual injunction [illegible]

has executed a mortgage in relation to the property belonging to the plaintiff in favour of the defendant a declaratory suit is not maintainable where the plaintiff is entitled to claim a consequential relief 37 Ind Cas 374

Limitation—In the case of declaratory suits time does not commence to run until the right to sue accrues 2 Bom L R 354=24 B 533 The relevant article is either Art 91 or 120 where the suit is for cancellation of an instrument or for declaration 25 A 1 (P C), 25 P L R 1900

Effect of declaration

43 A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees

Illustrations

A, a Hindu in a suit to which B, his alleged wife, and her mother, are defendant seeks a declaration that his marriage was duly solemnized, and an order for the restitution of his conjugal rights The Court makes declaration and order C, claiming that B is his wife, then sues A for the recovery of B The declaration made in the former suit is not binding upon C

CHAPTER VII

Of the Appointment of Receivers

Appointment of receivers discretionary

44 The appointment of a receiver pending a suit is a matter resting in the discretion of the Court

Reference to the Code of Civil Procedure

The mode and effect of his appointment, and his rights powers, duties and liabilities, are regulated by the Code of Civil Procedure

CHAPTER VIII

Of the Enforcement of Public duties

Power to order public servants and others to do certain specific acts

45 Any of the High Courts of Judicature at Fort William, Madras, 'Bombay and Rangoon'* may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature

Provided—

(*a*) that an application for such order be made by some person whose property franchise or personal right, would be injured by the the forbearing or doing (as the case may be) of the said specific act,

(*b*) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character,

* The words within quotations have been inserted by Act XI of 1923.

(c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice,

(d) that the applicant has no other specific and adequate legal remedy, and

(e) that the remedy given by the order applied for will be complete

Exemptions from such power

Nothing in this section shall be deemed to authorise any High Court—

(f) to make any order binding on the Secretary of State for India in Council, on the Governor General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on "the Governor in Council of Fort William in Bengal' * or ' on the Governor of Burma in Council †

(g) to make any order on any other servant of the Crown, as such merely to enforce the satisfaction of a claim upon the Crown, or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force

Principle—The exceptional remedy provided by this section being discretionary has to be exercised with caution The only right to be enforced must be clear and obligatory The first condition is that there should exist a personal right and injury to that right must be threatened The right must be one personal to the individual in seeking the remedy and not a right *in rem* such as belong to the community at large in the question to be tried. The existence of the legal right is the foundation of every writ of mandamus Though the proceeding [illegible]

[illegible] state the act or [illegible] hould be made [illegible] of this section [illegible] J 44

Scope—An application for mandamus cannot be made an occasion or excuse for obtaining the opinion of the Court on some doubtful point of law The writ does not lie to try the title 41 C 588 An applicant under this section must come with clean hands 40 C 588 Writ of Mandamus can be issued only by the High Courts of Calcutta, Bombay, Madras and Rangoon in their original jurisdiction but not by the other High Courts 5 Pat. 595=96 Ind. Cas 791=A. I R 1926 Pat 305, 4 Pat 224=86 Ind Cas 170

Public office—The term person holding a public office' in this section is not used in the same sense in which the expressions "a public officer' and 'public [illegible] Civil Procedure Code and s 21 of the Indian [illegible] nder this section is not whether the person [illegible] at the nature of the acts to perform which [illegible] lly liable to perform The syndicate being a [illegible] nd vested with [illegible] ig it become [illegible] 34=40 M 125 [illegible] right alleged [illegible] The author [illegible] d be sent to its proper destination and not the less so become the senate as a whole might be said to have an interest in the maintenance of the rights on one of its members 40 M 125

Corporation—An application under this section is the only remedy against municipal authorities acting illegally or *mala fide* 40 C 836, 17 C W N 929, 45 C 950, 19 C W N 129; see also 16 C W N 472, 36 C 274, 105 Ind Cas 428 99 Ind Cas 18, 1924 Mad 868

* These words within quotations have been substituted by Act VII of 1912

† Inserted by Act X of 1927

University—An order under this section can be issued against University 40 M 125; 41 C 518

Commissioner of police or magistrate—An order against them is competent *vide*, 7 Bom L R 161, 3 Bom L R 653 15 C W N 770

Clause (f)—This clause means only that order should not be passed against the Government 1926 M W N 842=99 Ind Cas 18=A I R. 1927 Mad 22

Application how made

46 Every application under section 45 ... the person inju... in question, h... thereof, and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made

Procedure thereon

If, in the last case, the person, Court or Corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary, and ... this behalf

Order in alternative

... f this Act, the ... followed This ... of the person ... eof 17 C W N 1225

Peremptory order

47 If the person, Court or Corporation to whom or to which such order is directed, makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely

Execution of, and appeal from, orders

48 Every order under this Chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court

Costs

49 The costs of all applications and orders under this Chapter shall be in the discretion of the High Court

Bar to issue of *mandamus*

50 Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*

Notes—Although this section has abolished the power of the High Court to issue a writ of mandamus still in practice such a writ is asked for and issued under s 45 99 Ind Cas 11=A I R 1927 Mad 22

Power to frame rules

51 Each of the said High Courts shall as soon as conveniently may be frame rules to regulate the procedure under this Chapter, and, until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable to applications and orders under this Chapter

PART III

OF PREVENTIVE RELIEF

CHAPTER IX

OF INJUNCTIONS GENERALLY

Preventive relief how granted

52 Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual

Scope—Under this section the grant of relief by injunction is a matter in the discretion of the Court and if the Court below has exercised its discretion in a

. . . ɔpeal to refuse to
adequate relief,

Temporary injunctions

53 Temporary injunctions are such as are to continue until a specfied time, or until the further order of the Court They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure *

Perpetual injunctions

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit the defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an act, which would be con trary to the rights of the plaintiff

Notes —This section defines the mode in which perpetual injunction can be granted 31 C L J 759

CHAPTER X

OF PERPETUAL INJUNCTIONS

Perpetual injunctions when granted

54 Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication

When such obligation arises from contract the Court shall be guided by the rules and provisions contained in Chapter II of this Act

When the defendant invades or theatents to invade the plaintiff's right to, or enjoyment of property, the Court may grant a perpetual injunction in the following cases (namely) —

(a) where the defendant is trusee of the property for the plaintiff,

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion,

(c) where the invasion is such that pecuniary compensation would not afford adequate relief,

(d) where it is probable that pecuniary compensation cannot be got for the invasion,

[1] (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation —For the purpose of this section, a trademark is property

Illustrations

(a) A lets certain lands to B and B contracts not to dig sand or gravel thereout A may sue for an injunction to restrain B from digging in violation of his contract

(b) A trustee threatens a breach of trust His co trustees, if any, should and the beneficial owners may, sue for an injunction to prevent the breach

(c) The directors of a publ c company are about to pay a dividend out of cap tal or borrowed money Any of the shareholders may sue for an injunction to restra n them

(d) The directors of a fire and l fe insurance company are about to engage in mar ine insurances Any of the shareholders may sue for an injunction to restrain them

(e) A, an executor, through misconduct or insolvency, is bringing the property of [illegible] tion to restrain him from

[illegible] sale of a small part of the [illegible] ale even though compen [illegible]

(g) A makes a settlement (not founded on marr age or other valuable consider tion) of an estate on B and his children. A thenc ontracts to sell the estate to C B or any of his children may sue for an injunction to restrain the sale

* See Act V of 1908

(*h*) In the course of A's employment as a vakil, certain papers belonging to his client B, come into his possession A threatens to make these papers public, or to communicate their contents to a stranger B may sue for an injunction to restrain A from so doing

(*i*) A is B's medical adviser He demands money of B which B declines to pay A then treatens to make known the effect of B's communications to him as a patient. This is *contrary to A's duty*, and B may sue for an injunction to restrain him from so doing

(*j*) A, the owner of two adjoining houses lets one to B, and afterwarde lets the other to C A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B B may sue for an injunction to restrain them from so doing

(*k*) *A lets certain arable lands to B for purposes of husbandry, but without any* express contract as to the ... customary in the district B ... and requiring many years ... from sowing the lands in contravention of his implied contract to use them in a husbandlike manner

(*l*) A, B and C are partners, the partnership being determinable at will A threatens to do an act tending to the destruction of the partnership property B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act

(*m*) A, a Hindu widow in possession of her deceased husband's property commits destruction of the property without any cause sufficient to justify her in so doing The heir expectant may sue for an injunction to restain her

(*n*) A, B and C are members of an undivided Hindu family A cuts timber growing on the family property, and threatens to destroy part of the family house, and to sell some of the family utensils B and C may sue for an injunction to restrain him

(*o*) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession A persists in trespassing on and damaging the houses and B is thereby compelled, at considerable expense to employ men to protect the possession B may sue for an injunction to restrain further acts of trespass

(*p*) The inhabitants of a village claim a right of way over A's land In a suit ... ject to no ... his alleged ...

... , obtains a ... ate for his debt A may sue for an injunction to restrain B

(*r*) A and B are in possession of contiguous land and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine B may sue for an injunction to restrain him from so doing

(*s*) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and ... the occupier B B may sue for an injunc...

(*t*) A pollutes the air ... ith the physical comfort of B and C, wl... ise B and C may sue for an injunction to r...

(*u*) A infringes B's patent If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement

(*v*) A pirates B's copyright B may obtain an injunction to restrain *the piracy*, unless the work of which copyright is claimed is libellous or obscene

(*w*) A improperly uses the trademark of B B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest

(*x*) A, a tradesman, holds out B as his partner against the wish and without the *authority of B B may sue for an injunction to restrain* A from so doing

(*y*) A, a ... to B After the death of A and B ... money by publishing A's letters ... ers and may sue for an injunction

(s) A carries on a manufactory and B is his assistant In the course of his business A imparts to B a secret process of value B afterwards demands money of A, threatening in case of refusal, to disclose the process to C, a rival manufacturer A may sue for an injunction to restrain B from disclosing the process

Scope —In order to entitle a l tigant to a perpetual injunction, he must establish
ɔ prevent a breach of an obligation The term
udes every duty enforceable by law, so that when
erson in respect to another that other is invested
The first para of s 54 establishes the broad and general rule, that given the breach of an existing legal right, which is vested in the applicant, the breach thereof may be restrained by the injunction This section and section 56 are to be read as supplementing each other The former defines the circumstances under which perpetual injunction may be granted, the latter enumerates the cases where an injunction must not be granted The right to an injunction cannot be determined independently of the provisions of this section and s 56 by reference to the terms of s 53 An inj inction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding 47 C 733, see also 13 B 252

An injunction against a community is not illegal when the community is sued in

Perpetual injunction can be granted for threatened interference of easement right

Cas 148 One of the two rival partners carrying on a rival business of the partner ship in compet tion with and to the prejudice of the other can be restrained by
ened damage is sufficient ground
But the invasion of plaintiff's
ɔuld not afford adequate relief
t on perpetual injunction cannot
obstruction of ancient lights
must be a substantial depriva
tion of light enough to render the occupation of a house uncomfortable according to the ordinary notions of mankind 9 M L T 383 Laches disentitles a person to the discretionary relief of an injunction 104 Ind Cas 563

55 When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts

Mandatory injunctions

Illustrations

(a) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act,* Part IV B may obtain an injunction, not only to restrain A from going on with the buildings but also to pull down so much of them as obstructs B s l ghts

(b) A builds a house with eaves projecting over B s land B may sue for an injunction to pull down so much of the eaves as so project

(c) In the case put as illustration (s) to section 54, the Court may also order all written communications made by B, as patient to A, as medical adviser, to be destroyed

(d) In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed

(e) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B s property

* See now Act IX of 1908

(*l*) A being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life B may obtain an injunction to restrain the publication

(*g*) In the cases put as illustrations (*v*) and (*w*) to section 54, and in illustrations (*e*) and (*l*) to this section, the Court may also order the copies produced by piracy, and the trademarks, statements, and communications, therein respectively mentioned, to be given up or destroyed

Scope—Injunction may be granted not merely when an injury had actually taken place, but also when it has been threatened A mandatory injunction is ordinarily ... isance such as branches over- ... C. 944 , see also 78 Ind Cas ... in which a mandatory injunc- ... for such injunction and who ... ie building complained of A W. N 1901, 53 Mandatory injunction cannot be granted in case of delay in suing A. W N 1900, 55 Where the footings of a wall have been in existence for a great length of time it is fair to presume that they were *not placed there wrongfully and* that they were placed within the limits of the land belonging to the owner of the wall Where a trespass by way of building a wall on the footings of plaintiff's wall has been carried out, not as the result of long and continuous work but of work compl ted quietly and promptly, and where the trespass in one which still continues and will continue so long as the wall is permitted to remain in its present site and where there has been no delay or acquiescence on the part of the plaintiff who instituted the suit after the completion of the wall *Held*, that the proper remedy is mandatory injunction 38 C 687

Even when there is some delay in the institution of a suit for injunction, and damages might be sufficient compensation, the Court has a discretion to grant the injunction if, in all the circumstances of the case it is of opinion that justice between the parties require it 16 Ind Cas 412 The mere fact that the plaintiff failed to move for temporary injunction before the construction of the building was finished, is not sufficient to deprive the plaintiff of his right to a mandatory injunction *Ibid*, see also 21 Ind Cas 249 *Where the balance of convenience is in favour of the* defendant the plaintiff is entitled to damages only and not a mandatory injunction 22 Ind Cas 785 See for other cases of mandatory injunction 24 Ind Cas 758, 51 Ind Cas 724, 41 Ind Cas 47, A W N 1901, 53, A W N (1906) 221, 21 S L R 170, 104 Ind Cas 563

Injunction when refused

56 An injunction cannot be granted—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings ,

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought ,

(*c*) to restrain persons from applying to any legislative body ,

(*d*) to interfere with the public duties of any department of the Govern ment of India or the Local Government, or with the sovereign acts of a Foreign Government ,

(*e*) to stay proceedings in any criminal matter ,

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced ,

(*g*) to prevent, on the ground of nuisance, an act of which it is not reason ably clear that it will be a nuisance ,

(*h*) to prevent a cc ...

(*i*) when equally ... usual mode of proceedin ...

(*j*) when the cor ... disentitle him to the assistance of the Court ,

(*k*) where the applicant has no personal interest in the matter

(*s*) A carries on a manufactory and B is his assistant In the course of his business, A imparts to B a secret process of value B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer A may sue for an injunction to restrain B from disclosing the process

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An injunction against a community is not illegal when the community is sued in a representative capacity 35 Ind Cas 106

A person who has patiently allowed encroachment to take place and has not taken action within a reasonable time cannot be said to have suffered such injury as would justify the Court in interfering on his behalf 13 Ind Cas 661 But where there is no delay or acquiescence the plaintiff is entitled to mandatory injunction 38 C 687
...ance of easement right
aintainable
defendant
ed 38 Ind
the partner-
strained by
injunction from carrying it on. 11 A L J 423 Threatened damage is sufficient ground for issue of mandatory injunction 1 A L J 239 But the invasion of plaintiff's right should be such that pecuniary compensation would not afford adequate relief

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts

Mandatory injunctions

Illustrations

(*a*) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act,* Part IV B may obtain an injunction, not only to restrain A from going on with the buildings but also to pull down so
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(*d*) In the case put as illustration (*y*) to section 54, the Court may also order A's letters to be destroyed

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(*f*) A being B's medical adviser, threatens to publish B's written communications with him showing that B has led an immoral life B may obtain an injunction to restrain the publication

(*g*) In the cases put as illustrations (*v*) and (*w*) to section 54, and in illustrations (*e*) and (*f*) to this section the Court may also order the copies produced by piracy, and the trademarks statements, and communications, therein respectively mentioned, to be given up or destroyed

Scope—Injunction may be granted not merely when an injury had actually taken place, but also when it has been threatened A mandatory injunction is ordinarily
isance such as branches over
C 944, see also 78 Ind Cas
in which a mandatory injunc
tion should be given to a co sharer who brings a suit for such injunction and who does not sue until some time after the completion of the building complained of A

continue so long as the wall is permitted to remain in its present site and where there has been no delay or acquiescence on the part of the plaintiff who instituted the suit after the completion of the wall *Held* that the proper remedy is mandatory injunction 38 C 687

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defendant the plaintiff
27 Ind Cas 785 See
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L R 170, 104 Ind Cas 563

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(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought,

(*c*) to restrain persons from applying to any legislative body,

(*d*) to interfere with the public duties of any department of the Government of India or the Local Government or with the sovereign acts of a Foreign Government,

(*e*) to stay proceedings in any criminal matter,

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced,

(*g*) to prevent on the ground of nuisance an act of which it is not reasonably clear that it will be a nuisance,

Illustrations

(a) A seeks an injunction to restrain his partner, B, from receiving the partnership debts and effects It appears that A had improperly possessed himself of the books of the firm and refused B access to them The Court will refuse the injunction

(b) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation A cannot obtain an injunction to restrain the piracy

(c) A sells an article called 'Mexican Balm" stating that it is compounded of diverse rare essence . ." a similar article to . into the belief that t . . to restrain the sale B shows that A s Mexican Balm consists of nothing but scented hog's lard A's use of his description is not an honest one and he cannot obtain an injunction

Scope—Where the actu . . of the case show that the invasion is l injunction under this section 1 609; 1 Ind Cas 689, 4 Ind Cas 55, P L R 1900, 385, 8 C W N. 395; 24 Ind Cas 758

Clause (a)—Where an application is made by a party to a suit to restrain execution in its entirety, the application is not maintainable in view of this clause 50 Ind Cas 180

Clause (b)—*Vide* 20 C W N 1213 (P C), A W N 1883, 67, 81 Ind Cas 2

Clause (g)—*Vide* 78 P R 1901

Clause (h)—*Vide* 45 P R 1919

Clause (i)—This clause prohibits an injunction being granted where there is any other remedy which would give equally efficacious relief 1 Bom L R 210, see also 18 C W N 545

... who contributes and interested in the due the prohibition of this poration from making

Injunction to perform negative agreement

57 Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement provided that the applicant has not failed to perform the contract so far as it is binding on him

Illustrations

(a) A contracts to sell to B for Rs 1,000 the goodwill of a certain business unconnected with business premises, and further agrees not to carry on that business in Calcutta B pays A Rs 1,000 but A carries on the business in Calcutta The Court cannot compel A to send his customers to B, but B may obtain an injunction ... Calcutta ... of a business A then sets up a similar ... s old customers to deal with him This ... may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their goodwill may be withdrawn from B

(c) A contracts with B to sing for twelve months at B s theatre and not to sing in public elsewhere B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment

(*d*) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract But he is entitled to an injunction restraining B from serving a rival house as clerk

(*e*) A contracts with B that, in consideration of Rs 10,00 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance B fails to pay the money. A *cannot be restrained from carrying on the business* within the specified distance

Scope—This section *deals only with such objection to the enforcement of a* negative agreement as performance of affirmati objections that might a agreement so far as it would operate to restrain any one from exercising a lawful trade or business This section extends to negative agreements such as are neces-

SCHEDULE—(*see section 2*)

Repealed by Act VII of 1891

THE INDIAN STAMP ACT, 1899

ACT NO. II OF 1899 *

RECEIVED THE GOVERNOR GENERAL'S ASSENT ON THE 27TH JANUARY, 1899.

An act to consolidate and amend the law relating to Stamps

WHEREAS it is expedient to consolidate and amend the law relating to Stamps, *It is hereby enacted as follows* —

Notes Stamp Act ought the Stamp Act in When there is a should be cons

15 A 50—A W N 1892 34

CHAPTER I.

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Indian Stamp Act, 1899,

(2) It extends to the whole of British India, inclusive of†British Baluchistan, the Santhal Parganas, and the Pargana of Spiti, and

(3) It shall come into force on the first day of July 1899

Definitions

2 In this Act, unless there is something repugnant in the subject or context,

(1) "banker" includes a bank and any person acting as a banker

(2) bill of exchange means a bill of exchange as defined by the Negotiable Instruments Act, 1881, ‡ and includes also a hundi, and any other document

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*Various local amendments have been made by Acts of local legislatures For those amendments, *Vide* Assam Act III of 1922 (*expired*), Ben Act III of 1922, Bom Act II of 1932, Burma Act II of 1 Mad. Act VI of 1922, Punj Act VIII of 1922, and amendments made by Assam e amendment made st March Act X of 1914 have been omitted here

†

‡

(21) "power-of attorney" includes any instrument (not chargeable with a fee under the law * relating to court fees for the time being in force) empowering a specified person to act for and in the name of the person executing it

(22) "promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881 †;

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen:

(23) "receipt" includes any note, memorandum, or writing—

(a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

(b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or

(c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person ‡

(24) "settlement" means any non testamentary disposition, in writing, of movable or immovable property made—

(a) in consideration of marriage

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him or

(c) for any religious or charitable purpose,

and includes an agreement in writing to make such a disposition, "and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition,"‖ "and

(25) 'soldier' includes any person below the rank of non commissioned officer who is enrolled under the Indian Army Act, 1911 "§

Clause (1)—A mere undertaking to lend money does not make a person a banker 17 B 684, 38 P L R 192, 9 B 373

Clause (2)—The term "Bill of Exchange" includes a hundi 23 C W N 534, see also 6 B H C Rep 24 (O C) A Shahjogi hundi is not a bill of exchange 19 C W N 1326, see also 5 C W N 313, 29 B 82, 26 A 493

Clause (4)—*Vide* 30 C 365

Clause (5)—An instrument evidencing an unconditional agreement to pay a certain sum of money only, the payment not being expressed to the bearer thereof and the name of the payee being not apparent on the face of it must be treated as a bond and should be stamped as such 3 Bom L R 699 Where a document is executed by defendant to plaintiff bearing an one anna stamp and attested by two witnesses for money received and not payable to bearer or order it is a bond and not a promissory note 29 B 82=6 [illegible] for a sale of cotton between two merchants [illegible] 8 Bom L R 234 A promissory note [illegible] deemed a bond if attested 9 Bom L [illegible] 87 (F B), 88 Ind Cas 860, 101 P L R 1903, 35 P R 1903 As regards the difference between a bond and an agreement *vide* 8 L B R 382=33 Ind Cas 920, 5 W R S C C 10, 33 B 426, 2 Pat L J 689=41 Ind Cas 693, 4 Ind Cas 290, 8 C 284, 2 A 659, 8 Bom L R 234 In a bond there must be an obligation to pay the money 22 C 757, see also 1882 P J 89; 1888 P J 128, 5 B 478 (F B)

Clause (7)—A post dated banker's cheque is available in the hands of its holder and is admissible in evidence only with one anna stamp 6 Bom L R 699, see

* The Court Fees Act (VII of 1870)
† Act XXVI of 1881
‡ The word 'and' after this have been omitted by Act 18 of 1928
§ The words quoted have been added by Act XV of 1904 s 2 cl (b)
‖ Inserted by Act 18 of 1928

also 1 Bom L R 715, 16 C 342 A banker's cheque does not like a Bill of Exchange, require acceptance 9 M I A 46 An instrument which purports to receive a sum of money from the saving account of a depositor with a bank and specifies the name of the messenger who is to receive payment is only a receipt and is not liable to stamp duty as a cheque 38 P L R 1912=13 Ind Cas 330=184 P W R 1912, see also 17 B 684

Clause (8)—*Vide* 1893 P J 440

Clause (10)—A document which assigned the benefit of a contract to the plaintiff is a conveyance 9 Bom L R 119 A transfer by trustees of trust property to a *cestui que trust* in pursuance of the trust is a conveyance 7 M 360 F B A conveyance, with the usual covenant for title, cannot be construed as constituting an indemnity bond 1 M 133

Clause (11)—*Vide* 8 C 721, 9 C L R 272, 23 A 213 6 Bom L R 679, 7 M 178, 90 Ind Cas 685, 23 C W N 535 As regards documents stamped subsequent to execution, *vide* 9 C L R 272 24 W R 298, 13 B 848

Clause (12)—As regards the meaning of the word 'execution *vide* 7 Bur L T 48, 19 B 635, 7 L B R 77 A document can be executed by an illiterate person either by putting a mark or by putting thumb impression 36 A 11 (F B), 7 M H C R 358

Clause 14)—*Vide* 30 A 11 (F B), 14 Bur L R 192, 11 A L J 966 (F B)

Clause (15)—In a joint Hindu family consisting of three brothers, one of the first agreed to take in lieu of his share in the family property movable and immovable, a certain amount in cash and certain securities for money in the form of bonds securing debts due to the family and executed a document in form of release in favour of the eldest brother The document is an instrument of partition 12 Bom L R 936=8 Ind Cas 633, see also 10 Bom L R 728=32 B 509, 15 B 677, 12 M 189, 47 B 321=25 Bom L R 112 An award whereby the arbitrators indicate the division of property among the rival litigants is an instrument of partition 31 B 68=8 Bom L R 869, see also 15 B 577, 69 Ind Cas 807, 9 B 50 27 Ind Cas 489 A deed whereby the partners in a partnership business divide between themselves certain debts of [illegible]
deed 3 Bom L R 152 [illegible]
accordance with a commissi[illegible]
passed by a Civil Court 7 Bc[illegible]
32 C 483, 42 Ind Cas 356

Clause (16)—*Vide* 36 Ind Cas 448=31 M L J 234, 36 Ind Cas 175=20 C W N 9?3, 47 C 485

Clause (17)—4 L B R 2 (F B), 25 M L J 613 (F B)

Clause (21)—Instrument which authorizes a person to receive certain money and sign a receipt but which does not empower him to do in the name of the person executing the instrument does not amount to a power of attorney 3 Bom L R 697, see also 33 A 487, 38 M 134 102 P L R 1912, 80 Ind Cas 467, 15 M 386 (F B)

Clause (22)—The promise to pay must be unconditional 26 M L J 19 8 C 534, 8 C 945, see also 27 M 1 23 M 156 It may be stipulated to be paid at a certain place 4 Bom L R 428

Clause (23)—*Vide* 11 A L J 309=20 Ind Cas 120, 11 C 267, 8 M 11, 11 M 329, 14 C W N 833, 42 Ind Cas 323

Clause (24)—*Vide* 37 A 264, 37 C 159, 20 B 104

CHAPTER II.

STAMP DUTIES

A —Of the Liability of Instruments to Duty

Instruments chargeable with duty

3 Subject to the provisio[illegible]

[illegible] that schedule as the proper duty therefor respectively, that is to say—

(*a*) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in British India on or after the first of July, 1899,

(*b*) every bill of exchange "payable otherwise than on demand"* or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India, and

(*c*) every instrument (other than a bill of exchange, † or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India and is received in British India

Provided that no duty shall be chargeable in respect of—

(1) any instrument executed by or on behalf of, or in favour of Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument,

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, ‡ or under Act XIX of 1838, or the Indian Registration of Ships Act, 1841, § as amended by subsequent Acts

Notes—*Vide* 2 C 58, 5 C 684, 52 Ind Cas 477=36 M L J 188

4 (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction the principal instrument only shall be chargeable with the duty prescribed in schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule

Several instruments used in single transaction of sale mortgage or settlement

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub section (1), be deemed to be the principal instrument

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed

Notes—A document whereby a purchaser transferred to his vendor by way of mortgage, an interest in [illegible] completing the sale of the property [illegible] amount of duty appropriate to the [illegible] 3 L B R 205 (F B) A executed a sale deed to B on a 3 Rs stamp paper conveying thereunder certain immovable property for Rs 275 The deed contained an endorsement by the undivided nephew of the executant giving his consent to the sale *Held* that the conveyance and the endorsement of consent were 'several instruments" to complete the transaction as contemplated by this section and that the consent should be written on a separate stamp paper of the value of one rupee 13 B 281

Cases—37 A 264=28 Ind Cas 348, 37 A 159=13 A L J 96=27 Ind Cas 731

5 Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act

Instruments relating to several distinct matters

Notes—The test under the Stamp Act is not whether it comprises distinct contracts but whether it comprises distinct matters 5 Ind Cas 812=15 P R 1910 (F. B)

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* The words within quotations have been inserted and the word 'cheque' has been omitted by Act 5 of 1927

† Certain words repealed by Act 5 of 1927 have been omitted

‡ Stat 57 & 58 Vict, c 60

§ Act X of 1841

= 16 P W. R 1910, 102 P R 1895 A penal clause in the agreement can not be considered separately, as constituting a bond but simply as one of the several subsidiary clauses making up the whole agreement, and the document is only chargeable as an agreement 2 A 654 (F B), but see 9 A 585, 8 C 284 An instrument otherwise properly stamped does not become two instruments for purposes of stamp for the simple reason that it is executed by two persons A W N 1884 318 This section relates only to transactions so distinct in their nature as to be capable of being carried out by two or more instruments instead of one 8 C 254 = 10 C L R 33 It is not competent for several persons who are unconnected and have no common interest in a property to execute a single power of attorney in respect thereof 2 M L J 988 (F B) Where the consideration of a lease consisted partly of rent to be paid each month and partly of a sum equal to a month's rent paid in advance and to be re paid at the end of the lease, the instrument was not to be regarded as dealing with the two distinct matters but as relating to one matter ... 'uded ... an ... this

6 Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties

Instruments coming within several descriptions in Schedule I

Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid

Notes —9 A 585=(1887) A W N 190 8 C 254=10 C L R 33, 17 A 55, 21 C L J 22=33 Ind Cas 247, 13 C W N 63, 17 C W N 395

7 (1) No contract for sea insurance (other than such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894)* shall be valid unless the same is expressed in a sea policy

Policies of sea insurance

(2) No sea policy made for the time shall be made for any time exceeding twelve months

(3) No sea policy shall be valid unless it specifies the particular risk or adventure or the time for which it is made, the names of the subscribers or under writers, and the amount or amounts insured

(4) Where any sea insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage and also with duty as a policy for time

Notes —*Vide* 29 C W N 893=52 C 408 P C

8 (1) Notwithstanding anything in this Act any local authority raising a loan under the provisions of the Local Authorities Loans Act, 1879, † or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan be chargeable with a duty of "one per centum" ‡ on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped and shall not be chargeable with any further duty on renewal consideration sub division or otherwise

Bonds debentures or other securities issued on loans under Act XI of 1879

(2) The provisions of sub section (1) exempting certain bonds debentures or other securities from being stamped and from being chargeable with certain

* Stat 57 & 58 Vict c 60 † Act XI of 1879
‡ Substituted for 'eight annas per centum by Act VI of 1910

further duty shall apply to the bonds, debentures, or other securities of all outstanding loans of the kind mentioned therein, and all such bonds debentures or other securities shall be valid, whether the same are stamped or not :

Provided that nothing herein contained shall exempt the local authority which has issued such bonds debentures or other securities from the duty chargeable in respect thereof prior to the twenty sixth day of March, 1897, when such duty has not already been paid or remitted by order issued by the Governor General in Council

(4) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues

Power to reduce remit or compound duties

9 The Governor General in Council may, by rule or order published in the *Gazette of India*—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments or any of the instruments, belonging to such class or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class are chargeable, and

(b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities

B—Of Stamps and the mode of using them

Duties how to be paid

10 (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained, or

(b) when no such provision is applicable thereto—as the Governor General in Council may by rule direct

(2) The rules made under sub section (1) may, among other matters regulate,—

(a) in the case of each kind of instrument—the description of stamps which may be used,

(b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(c) in the case of bills of exchange or promissory notes written in any Oriental language—the size of the paper on which they are written

Notes—A promissory note for Rs 4,300 written on an impressed hundi paper for Rs 3 was correctly stamped and did not contravene rules framed under the Stamp Act The rules under s 9 of the Stamp Act (1 of 1879) require that a document such as above must be written on an impressed sheet to render it compulsory that promissory notes chargeable with a duty of 6, 10 or 12 annas must be written on a hundi paper, but that does not imply any prohibition against other promissory notes also being so written, as the hundi papers are also impressed sheets 14 M 32 A document can be written in seven sheets of paper 29 C L J 305=23 C W N 534, see also 4 L B R 320, 73 P R 1886

Use of adhesive stamps

11 The following instruments may be stamped with adhesive stamps, namely —

(a) instruments chargeable with the duty of one anna "or half an anna,"* except parts of bills of exchange payable otherwise than on demand and drawn in sets,

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* The words quoted have been added by Act V of 1906 s 3

(*b*) bills of exchange, * and promissory notes drawn or made out of British India ;

(*c*) entry as an advocate, vakil or attorney on the roll of a High Court ;

(*d*) notarial acts ; and

(*e*) transfers by endorsement of shares in any incorporated company or other body corporate

Notes —The "words drawn or made out of British India" in cl (6) apply to entire clause 2 M 173 As regards the meaning of the word "may", *vide* 3 C 47= 4 I A 127 ; 17 C 329 , 22 Bom 384

Cancellation of adhesive stamps

12 (1) (*a*) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancell the same so that it cannot be used again ;

(*b*) Whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped

(3) The person required by sub section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner

Notes —A person who cancels an adhesive stamp affixed to a document does so sufficiently if he writes his name across it It is not necessary that he should also date the stamp 3 A L. J 326 Where the stamp on a document is not cancelled, it is considered as an unstamped document 3 A L J 25=28 A 298 , 60 Ind Cas 652 , 14 Ind Cas 512 , 16 Ind Cas 834, 95 Where the stamp on a pronote or a receipt [illegible]
extendir [illegible]
documn [illegible]
been ca [illegible]
Ind Ca [illegible]
two par [illegible]
its canc [illegible]
P R 1c [illegible]
is not p [illegible]
bearing [illegible] missory note payable on demand written on impressed stamp as a hundi is nevertheless admissible in evidence A W N 1885 317 The receipt to a salary bill of a Government official which requires to be stamped before or at the time of its execution is not an instrument under this section 9 A 210=5 A W N 1887 'Execution" when applied to a document, is the last act or series of acts which completes it 19 B 635 The question whether a stamp has been duly cancelled within the meaning of this section is one of fact to be decided by an examination of the stamp itself 148 P R 1919, 15 S L R 34=66 Ind Cas 5 A cross mark on the stamp of a pronote by an illiterate person in token of indication of his acknowledgment constitutes an effectual cancellation of the stamp. A I R 1925 Rang 209=88 Ind Cas 933 Where an adhesive stamp is not cancelled at the time of execution of the document, it is considered as uncancelled 90 Ind Cas 689

Instruments stamped with impressed stamps how to be written

13 Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

* Certain word after this repealed by Act 5 of 1927 has been omitted

22 ... statement of a current rate of exchange, ... re, and is ... atement, it shall, so far as regards the subject matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of ... exchange or average price.

Notes—Subsequent rise of price does not affect the value of the stamp of a document 13 C 261, but see 26 C 179

23 Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein

Instruments reserving interest

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements

23A* (1) Where an instrument (not being a promissory note or bill of exchange)—

(*a*) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(*b*) makes redeemable or qualifies a duly stamped transfer, intended as a ...

... greement or memorandum of ... le No 5 (*c*)"† of Schedule I ... ent shall only be chargeable with the like duty

24 Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the ... to any such certificate of sale ... 1.

How trasfer in consideration of debt, or subject to future payment, etc, to be charged

Explanation—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale:

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations

(1) A owes B Rs 1,000 A sells a property to B, the consideration being Rs 500 and the release of the previous debt of Rs. 1,000 Stamp duty is payable on Rs 1,500

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* S 23 A is added by Act XV of 1904, s 3

† Words and figures quoted were substituted for "Article No 5 (b)" by Act I of 1912

(2) A sells a property to B for Rs 500 which is subject to a mortgage to C for Rs 1,000 and unpaid interest Rs 200 Stamp duty is payable on Rs 1,700

(3) A mortgages a house of the value of Rs 10,000 to B for Rs 5,000 B afterwards buys the house form A Stamp duty is payable on Rs 10 000 less the amount of stamp duty already paid for the mortgage.

Notes—Where a mortgaged property is sold to the mortgagee along with other property not mortgaged the stamp on the deed of sale need not cover the mortgaged property 4 Bom L R 430 This section has no connection with the question of liability to registration 3 N L R 72 The benefit provided by proviso to explanation enures also for the benefit of the assignee of a mortgagee 5 Bom L R 523 The proviso to this section contemplates that to en
thereunder, the property transferred should be
should not merely form a portion thereof 29 B
this section the *ad valorem* duty is payable on
actually mentioned in the conveyance 2 Bom I R 401=24 B 157 Where property is sold subject to a mortgage or other charge the payment of such mortgage or charge forms under ordinary circumstances no part of the consideration for the purchase The stamp duty payable on a document conveying such a property is an *ad valorem* duty on the consideration for the sale 10 C 92=13 C L R 164 A deduction under the proviso to this section can be made in favour of the mortgagor vendor only where the identical property mortgaged is transferred to the mortgagee and not where only a part of the entire mortgaged property is sold 28 Bom L R 1091=98 Ind Cas 282=50 B. 640=A I R 1926 Bom 542

Valuation in case of annuity, etc

25 Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance as the case may be, shall, for the purposes of this Act be deemed to be,—

(*a*) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount,

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due, and

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due

Notes—*Vide* (1896) A W N 107 19 C 499

Stamp where value of subject matter is indeterminate

26 Where the amount or value of the subject matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient

*"Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share for the purpose of stamp duty,—

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* This proviso has been substituted for the original first proviso by Act XV of 1904, s 4

(a) when the lease has been granted by or on behalf of the Secretary of State in Council at such amount or value as the Collector may having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the said Secretary of State in Council under the lease or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year,

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease'

Provided also that where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution

Notes—The amount or value of the subject matter of a mortgage is the amount expressed in the document as intended to be secured 9 L B R 217=1? Bur L T 1=50 Ind Cas 303 This section is governed by s 35 5 Pat L J 650=58 Ind Cas 99, 1924 Nag 408, 5 P L T 570 P C By the combined operations of ss 26 and 35 of the Stamp Act (11 of 1899), a lessee under a mining lease is entitled upon payment of the proper penalty to recover the royalty provided for in the lease even though the amount thereof should prove to be in excess of that covered by [illegible]
1140=82 In [illegible]
of instrume [illegible]

Proviso—56 Ind Cas 184=5 Pat L J 650 affirmed by P C in 51 I A 332=4 Pat 34

27 The consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable shall be fully and truly set forth therein

Facts affecting duty to be set forth in instrument

Notes—Section 27 requires the consideration and other facts attaching the chargeability of any instrument to be set forth therein *Per Miller* C J in 58 Ind Cas 99 at p 103=5 Pat L J 560 see also 16 C 432, 27 B 279 5 B L R 103 8 M 453, 44 A 339=20 A L J 161

28 (1) Where any property has been contracted to be sold for one consideration for the whole and is conveyed to the purchaser in separate parts by different instruments the consideration shall be apportioned in such manner as the parties think fit provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration

Direction as to duty in case of certain conveyances

(2) Where property contract [illegible]
the whole, by two or more pe [illegible]
others or wholly for others is co[illegible]
persons by or for whom the same [illegible]
[illegible] *valorem*
[illegible]
property but not having obtained a conveyance thereof contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub purchaser the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser

(4) Where a person having contracted for the purchase of any property but not having obtained a conveyance thereof contracts to sell the whole, or any part thereof, to any other person or persons and the property is in consequence conveyed by the original seller to different persons in parts the

conveyance of each part sold to a sub purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub purchasers.

Provided that the duty on such last mentioned conveyance shall in no case be less than one rupee

(5) Where a sub purchaser takes an actual conveyance of the interest of the person immediately selling to him which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property [illegible] equal to that which would [illegible] obtained by such original [illegible] with a duty of five rupees

E—Duty by whom payable

Duties by whom payable

29 In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,—

(*a*) in the case of any instrument described in any of the following Articles of Schedule I, namely —

No 2 (Administration Bond),
*"No 6 (Agreement relating to Deposit of Title deeds Pawn or Pledge),'
No 13 (Bill of Exchange),
No 15 (Bond),
No 16 (Bottomry Bond),
No 26 (Customs Bond),
No 27 (Debenture),
No 32 (Further Charge)
No 34 (Indemnity Bond),
No 40 (Mortgage Deed),
No 49 (Promissory Note),
No 55 (Release),
No 56 (Respondentia Bond),
No 57 (Security Bond or Mortgage-Deed),
No 58 (Settlement),
No 62 (*a*) (*Transfer of Shares in an Incorporated Company* or other body corporate),
62 (*b*) (Transfer of Debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8)
62 (*c*) (Transfer of any interest secured by a bond, mortgage-deed or Policy of Insurance),—

by the person drawing, making or executing such instrument

†(*b*) in the case of a policy of insurance other than fire insurance—by the person effecting the insurance,

†(*bb*) in the case of a policy of fire-insurance—by the person issuing the policy,

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* These words and figures have been substituted for the original by Act XV of 1904, s 5

† Cls (*b*) and (*bb*) have been substituted in place of the original cl (b) by Act V of 1906, s 4

(*c*) in the case of a conveyance (including a re conveyance of mortgaged property)—by the grantee, in the case of a lease or agreement to lease—by the lessee or intended lessee

(*d*) in the case of a counterpart of a lease—by the lessor

(*e*) in the case of an instrument of exchange—by the parties in equal shares

(*f*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates and

(*g*) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue authority, or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs

Obligation to give receipt in certain cases

30 Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any movable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque note or property, give a duly stamped receipt for the same

' Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire insurance shall within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same ' *

Notes —The word "person includes a trading company 27 C 324=4 C W N 440 A person receiving the money must give a receipt for the same He need not specify the particular purpose for which the money is paid 34 A 192=13 Ind Cas 778 In case of a money-order the postal rece pt is sufficient *Ibid*

CHAPTER III

Adjudication as to Stamps

Adjudication as to proper stamp

31 (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees, and not less than eight annas) as the Collector may in each case [illegible] with which, in his judg[illegible] to be furnished with an abstract of the instrument and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly

Provided that—

(*a*) no evidence furnished in pursuance of this section shall be used against any person in any Civil proceeding except in an inquiry as to the duty with which the instrument to which it relates is chargeable, and

(*b*) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable be relieved from any penalty which he may have incurred under this Act by

* This paragraph has been added by Act V of 1906, s 5

reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

onferred on him by hargeable, when it instrument under renue authorities to the High Court under s 57 25 M 751, see also 25 M 752 (F. B).

32. (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and—

Certificate by Collector

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorize the Collector to endorse—

(a) any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be,

(b) any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India, or

(c) any instrument chargeable with the duty of one anna,) "or half an anna" * or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped

Notes—This section m in evidence of a docume it, s stamped 7 N L R 20

be questioned by a Civil Court 25 M

CHAPTER IV

Instruments not duly stamped

33 (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before

Examination and impounding of instruments

chargeable, and so produced or coming before him in order to ascertain whether

* These words have been inserted by Act V of 1906, s. 3

it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed

Provided that—

deemed to require any Magistrate impound, "if he does not think fit m in the course of any proceeding XII or Chapter XXXVI of the

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the

(3) of doubt,—

(a, y determine what offices shall be deemed to be public offices ; and

(b) the Local Government may determine who shall be deemed to be persons in charge of public offices

t of the section, it must uced or came before the ons and having regard to said that the *hatchhiti* tance of his functions p in a document the pro document must first be lty it can be admitted in rder to entitle the Court to impound an instrument, it must come before it in the performance of its functions 21 C W N 246=27 C L J 525=35 Ind Cas 415, see also 131 P L R 1906 (F B) Under clause (a) of the proviso it is optional with the Magistrate to impound an instrument insufficiently stamped 29 Ind Cas 671 Under sub section (a), the arbitrators also cannot receive documents in evidence where they are improperly stamped 40 C 219=17 C W N 395, 13 C W N 63 As regards the meaning of the word 'comes' *vide* 25 M 525 Whether a document is insufficiently stamped is to be determined with reference to the provisions of the Act, which is in force at the time when the question as regards insufficiency arises 3 M 251, 5 M 391 (F B), 1 P R 1885 Rev

Special provision as to unstamped receipts

34 Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor

Instruments not duly stamped inadmissible in evidence, etc

35 No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped

Provided that—

(a) any such instrument not being an instrument chargeable with a duty of one anna "or half an anna"† only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such a duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

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* Act V of 1898

† The words quoted have been added by Act V of 1906, s 3.

(*b*) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it ,

(*c*) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp,

(ny instru ment proceeding under Procedure, 1898 ,*

(*e*) Nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act

Notes—The expression "duly stamped" refers to the time when the document is tendered in evidence 6 Bom L R 699 An instrument, which is chargeable with stamp duty and is not so stamped, is unlike an invalid instrument, which is receivable for collateral purposes not admissible for any purpose whatsoever, save in criminal cases. 17 M L J 308=30 M 886 , see also 29 Ind Cas 671 , 1925 A I R

s well as the penalty of one rupee 21 A 374 ent an instrument which is not ones from being admitted on admisson of a document in Court 139 P R 1890 A demand promissory note stamped with four stamps of a quarter anna each is not duly stamped. It cannot be admitted in evidence under this section, nor can

defective stamp it is open to an Appellate Court to receive the document on payment of the stamp duty and penalty 55 Ind Cas 923=21 Cr L J 447 Under this Act, only the original unstamped instrument can be validated by payment of the deficit

*Act V of 1898

admissible in evidence 53 C 515=43 C L J 493=95 Ind Cas 483=30 C W N

recovered under it, unless it has a proper stamp, so the proviso provides that if there
afterwards on payment of a penalty and the
W N 296=4 Pat 34=A I R 1924 P C
ppens to be of the wrong kind, it should not
Cas 640

36 Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be *called in question* at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped

Admission of instrument where not to be questioned

Notes —The expression "admitted in evidence" in this section, means the act of
udicial determination of the question whether it
want of stamp In other words, the Court
nd consciously to the question whether the
L R 466=6 Ind Cas 903 This section really
on of what already is in evidence in the
3=16 Ind Cas 96, see also 11 A L J
sion of a promissory note admitted in
ned at any stage of the same suit on the
stamped L B R (1893 1900), 485, L B R. (1893 1900), 600 When a document has once been admitted in evidence, its admission cannot be objected to in an appellate Court on the ground that it is not properly stamped 2 P R 1891, L B R (1893 1903), 68 The provisions that have
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=53 C 515, 71 Ind Cas 42, 73 Ind Cas 799, 3 C 787, 5 M 220, 8 M L J. 66; 12 M L J 351 The expression "admitted in evidence" means the act of letting the document in as part of the evidence as a result of judicial determination of the question whether it can be admitted in evidence or not 50 Ind Cas 781 This section is applicable to documents of the years when Act 36 of 1860 was in force as it is to insufficiently stamped documents under the present Act 32 C L J 75 The principle of acquiescence can only be applied when secondary evidence has been given of the contents of a document which, if produced itself could have
Cas 75=A I R 1926 Lah
tain conditions his successors
L J 389 This section of a
ppeal or revision independently
of the fact whether the admissibility was challenged in the Lower Court or not (1926) M W N 757=98 Ind Cas 75=A I R 1926 Mad 1148 Where the trial Judge admits a document after levying the penalty the document cannot be questioned by the appeal Court 39 M L T, 25=104 Ind Cas 415=53 M L J 131 Where a trial Court admits a document imp
ocu
ment can not be questioned in revis
nder
this section must be express Mere
Lah
L J 343=A I R 1925 Lah 552
can
not under this section, be subsequently objected to on the ground that under the

Stamp Act in force at the date of its execution the document was insufficiently stamped, as that section is applicable to documents under the Act in which it is contained 32 C L J 75=59 Ind Cas 3

Admission of improperly stamped instruments

37 The Governor General in Council may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

Notes —The words "stamp of an improper description" in this section as well as in the rules under the Act are not to be interpreted as including a description of stamp appropriated for purposes outside the Stamp Act altogether but must be confined to a stamp which is used for the purpose of denoting the stamp-duty chargeable on an instrument, but which is improper in a particular case having regard to the Act and rules 23 A 213 F B=A W N 1901 54 Section 52 does not cover a case in which Court fee stamp has been erroneously used where non judicial stamp ought to have been used under the provisions of the Act 14 C W N 1101=12 C L J 324=7 Ind Cas 94

Instruments impounded how dealt with

38 (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

Notes —A decree can not be given on an unstamped document not produced, even though its production is not necessary U B R (1897 1901) Vol II, p 556 The duty chargeable on an insufficiently stamped document must be decided with reference to the Act in force at the date of execution of the document and the penalty leviable is to be determined always in accordance with the provisions of the Act in force at the time of so determining 7 P R 1885 Rev This Act provides for the admission of an instrument in evidence upon payment of duty and penalty, but makes no provision for the admission of secondary evidence of its contents before such payment U B R (1892 1896) Vol II, p 631. As regards instrument impounded how dealt with, *vide* 18 A 295, 25 M 752, 25 M 525

Collector's power to refund penalty paid under section 38 sub section (1)

39 (1) When a copy of an instrument is sent to the Collector under section 38, sub section (1), he may, if he thinks fit,* refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid

Notes —*Vide* 5 M 394

Collector's power to stamp instruments impounded

40 (1) When the Collector impounds any instrument under section 33, or [illegible]

anna† only or a bill of exchar[illegible]
lowing procedure :—

* Words omitted by Act IV of 1914 have been left out here
† These words have been inserted by Act V of 1906, s 3

(*a*) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be ;

(*b*) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees, or, if he thinks fit, "an amount not exceeding"* ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees .

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector

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the purpose

ector under section 38,

. with it as provided by

Notes—Where the Collector has certified under this section and has realized

be final and conclusive 22 B 632 The conclusive presumption laid down in sub section (2) does not arise where the Collector acts without jurisdiction 48 A 332

41. If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty of one anna 'or half an anna"† only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed

Instruments unduly stamped by accident

42 (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty

Endorsement of instruments on which duty has been paid under section 35 40 or 41

thereof, and the name

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it, or as such person may direct :

Provided that—

(*a*) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35, shall be so delivered before the expira-

* The words quoted were inserted by Act XV of 1904 s 6

† These words have been inserted by Act V of 1936, s 3

tion of one month from the date of such impounding, or if the Collector has certified that its further detention is necessay and has not cancelled such certificate

(*b*) nothing in this section shall effect the Code of Civil Procedure,* section 144, clause (3)

Notes —A copy . . . payment of the pena . . . the document is fo . . . see 20 W R 63 In case of payment of proper duty and penalty, the Collector should give a certificate on the instrument 18 A 295=(1896) A W N 68; see also 23 M 49, 7 M 44

43 The taking of proceedings or the payment of a penalty under this Chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp law in respect of such instrument

Prosecution for offence against Stamp law

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty

Notes —This section gives the power to the Collector to start prosecution 12 M 231, see also 7 M 537

44 (1) When any duty or penalty has been paid under section 35 section 37, section 40 or section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid

Persons paying duty or penalty may recover same in certain cases

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which

[illegible]

recovering the sum 49 A 501=100 Ind Cas 737=25 A L J 482 This section has no application to the case of penalty illegally levied A I R (1924) Oudh 114

Clause —*Vide* 14 Ind Cas 761, 13 M L J 224 19 Ind Cas 306

* Act XIV of 1882 (But see now Act V of 1908)

45 (1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part

Power to Revenue authority to refund penalty or excess duty in certain cases

[illegible]

writing made within three months of the order charging the same, refund the excess

Notes—11 W R 250, 5 C 311, 13 B 449

46 (1) If any instrument sent to the Collector under section 38, sub section (2) is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage

Non liability for loss of instruments sent under section 38

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first men tioned person and authenticated by the person impounding such instrument

Copy may be made of instru ments so sent

47 When any bill of exchange, "or promissory note"* chargeable with the duty of one anna is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner herein before provided, may pay the sum payable upon such bill, "or note"* and may charge the duty against the person who ought to have paid the same or deduct it from the sum payable as aforesaid, and such bill "or note"* shall, so far as respects the duty, be deemed good and valid.

Power of payer to stamp bills and promissory notes received by him unstamped

Provided that nothing herein contained shall relieve any person from any penalty 'or proceeding to which he may be liable' in relation to such bill "or note"*

Notes—This section does not permit a bill of exchange being stamped by an intermediate holder of the bill who is neither the drawer nor the drawee in order to validate such bill and thereby enable himself or a subsequent holder of the bill to sue the drawer 86 Ind Cas 357=A I R 1925 Sind 241, 90 Ind Cas 689=1925 A I R 520 (Bom)

48 All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue

Recovery of duties and penalties

Notes—30 A 271=5 A L J 262

CHAPTER V

Allowances for Stamps in Certain Cases

49 Subject to such rules as may be made by the 'Local Government† as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to

Allowance for spoiled stamps

* The words within quotations have been substituted by Act V of 1927, s 5

† Words within quotations have been substituted for the words "Governor General in Council" by Act IV of 1914

the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely —

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or, by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person :

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto

(c) in the case of bills of exchange, "payable otherwise than on demand,"* or promissory notes—

(1) the stamp on "any such bill of exchange"† signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange † to be afterwards written thereon

(2) the stamp on any promissory note signed by or in behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands

(3) the stamp used or intended to be used for "any such bill of exchange,"† or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same being a bill of exchange,† may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee provided that another completed and duly stamped bill of exchange† or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid with the spoiled bill,† or note

(d) the stamp is used for an instrument executed by any party thereto which –

(1) has been afterwards found to be absolutely void in law from the beginning

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended

(3) by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete, and insufficient for the purpose for which it was intended :

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured or by the refusal or non acceptance of any office thereby granted totally fails of the intended purpose

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value

(7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument, made between the same parties and for the same purpose is executed and duly stamped

* Inserted by Act 5 of 1927

† Certain words after this repealed by Act 5 of 1927 have been omitted.

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled

Explanation —The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid, is an impressed stamp within the meaning of this section

Notes—2 M L J 181 (F B)

Application for relief under section 49 when to be made

50 The application for relief under section 49 shall be made within the following periods, that is to say,—

(1) in the cases mentioned in clause (*d*) (5), within two months of the date of the instrument·

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled

(3) In the case of a stamped paper in which an instrument has been executed by any of the parties thereto within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed

Provided that,—

(*a*) when the spoiled instrument has been for sufficient reasons sent out of British India the application may be made within six months after it has been received back in British India,

(*b*) when, from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument

Allowance in case of printed forms no longer required by Corporations

51 The Chief Controlling Revenue authority "or the Collector if empowered by the Chief Controlling Revenue authority in this behalf *' may, without limit of time, make allowance for stamped papers used for printed forms of instruments "by any banker or † by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said 'banker,' † company or body corporate, provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid

Allowance for misused stamps

52 (*a*) *When any person has inadvertently used, for an instrument chargeable with duty*, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty or

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13,

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed and upon the instrument if chargeable with duty, being re stamped with the proper duty cancel and allow as spoiled the stamp so misused or rendered useless

Notes—15 C W N 11 1=12 C L J 3?4

* Words quoted were inserted by Act IV of 1914

† In s 51, the words quoted have been inserted by Act V of 1906 s 6.

Allowance for spoiled or misused stamps how to be made

53 If any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

(a) other stamps of the same description and value, or,

(b) if required and he thinks fit, stamps of any other description to the same amount in value, or,

(c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee

Allowance for stamps not required for use

54 When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use the Collector shall repay to such person the value of such stamp or stamps in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

(a) that such stamp or stamps were purchased by such person with a *bona fide* intention to use them and

(b) that he has paid the full price thereof, and

(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered

Provided that, where the person is a licensed vendor of stamps, the Collector *may, if he thinks fit, make the repayment of the sum actually paid by the vendor* without any such deduction as aforesaid

Allowance on renewal of certain debentures

55 When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such debenture the value of the stamp on the original or on the new debenture whichever shall be less

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as the Governor General in Council may direct

Explanation—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes —

(a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same,

(b) the issue of one debenture in place of two or more original debentures the total amount secured being the same,

(c) the substitutsion of the name of the holder at the time of renewal for the name of the original holder, and

(d) the alteration of the rate of interest or the dates of payment thereof

CHAPTER VI

REFERENCE AND REVISION

Control of, and statement of case to, Chief Controlling Revenue authority

56 (1) The powers exercisable by a Collector under Chapter IV and Chapter V "and under clause (a) of the first proviso to section 26*" shall in all cases be subject to the control of the Chief Controlling Revenue authority

Procedure where Collector feels doubt as to duty chargeable

(2) If any Collector acting under section 31, section 40, or section 41, feels doubt as to the amount of duty with which any instrum

ment of

on ther

ing Revenue authority

* The words quoted have been added by Act XV of 1904 s 7

(3) Such authority shall consider the case, and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision

Notes —*Vide* 25 M 752

Statement of case by Chief Controlling Revenue authority to High Court or Chief Court

57 (1) The Chief Controlling Revenue authority may state any case referred to it under section 56, sub section (2), or otherwise coming to its notice and refer such case with its own opinion thereon —

(*a*) if the case arises in the territories for the time being administered by the Governor of Fort St George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be,

(*b*)* if it arises in Agra or in Ajmir—to the High Court of judicature at Allahabad,

(*n*) if it arises in Oudh—to the Chief Court of Oudh,'

'(*bb*) if it arises in the territories for the time being administered by the Lieutenant Governor of Bihar and Orissa—to the High Court of Judicature at Patna, †

(*c*) if it arises in the territories for the time being administered by the Lieutenant Governor of the Punjab or in British Baluchistan—to the "High Court of Judicature at Lahore, ‡

(*d*) if it arises in the Central Provinces—to the High Court of Judicature at Bombay,

'(*dd*) if it arises in Burma—to the High Court of Judicature at Rangoon' §

(*e*) if it arises in any other part of British India—to the High Court of Judicature at Fort William

(2) Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail

Power of High Court or Chief Court to call for further particulars as to case stated

58 If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby the Court may refer the case back to the Revenue authority by which it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf

Procedure in disposing of case stated

59 (1) The High Court or Chief Court upon the hearing of any such case shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded

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* [illegible]

† [illegible] added by Act XIII of 1916

‡ [illegible] substituted by Act XVIII of 1919

§ [illegible] inserted by Act 43 of 1923

(2) The Court shall send to the Revenue-authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar and the Revenue authority shall, on receiving such copy, dispose of the case conformably to such judgment

Statement of case by other Courts to High Court or Chief Court

60 (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue authority, he would under section 57 refer the same

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue authority, and another like copy to the Judge making the reference, who shall on receiving such copy, dispose of the case conformably to such judgment

(3) References made under sub section (1) when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior

Notes—This section does not deal with a case where a reference has been made to a Collector and his decision is obtained 131 P L R 1906 (F B)

Revision of certain decisions of Courts regarding the sufficiency of stamps

61 (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding, under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898,* makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp or upon payment of duty and a penalty under section 35 the Court to which appeals lie from or references are made by, such first mentioned Court may, of its own motion, or on the application of the Collector, take such order into consideration

(2) If such Court, after such consideration is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced

(3) When any declaration has been recorded under sub section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possesson of such Court shall also send him such instrument

(4) The Collector may, thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp law which the Collector considers him to have committed in respect of such instrument

Provided that—

(i) no such prosecution shall be instituted where the amount (including *duty and penalty*) which according *to the determination of such Court*, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty

* Act V of 1898

(*b*) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42

Notes—Where ' ~ " ~ section, there is not 93 Ind Cas 909=A in evidence, such in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. 1923 Nag 109

CHAPTER VII

Criminal Offences and Procedure.

Penalty for executing, etc instrument not duly stamped

62 (1) Any person—

(*a*) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance, or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange,* "payable otherwise than on demand"† or promissory note without the same being duly stamped, or

(*b*) executing or signing otherwise than as a witness any other instrument ... duly stamped, or ... any proxy not duly stamped, ... with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument, upon the persons who paid such penalty.

(2) If a share warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees

Notes—A document which is merely a petition to the Court informing it of an agreement into which the parties had orally entered out of Court to compromise a suit and praying for a decree in the terms of the compromise does not require to be engrossed upon the general stamp but only requires the ordinary Court fee label 15 A L J 846 "Accepting' is a technical term and does not apply to the mere taking of a promissory note in one's favour from the debtor "Presenting' like accepting is also a technical term U B R. (1892 1896) Vol I, p 312, see also U B R (1892 1896) Vol I, p 311 Accepting means executing as an acceptor 40 C 168 The mere receipt of an unstamped document is not an offence U B R 1904 2nd Qr stamp 1, I N L R 163 An attested promissory note cannot be considered as a bond U B R (1897 1901) Vol 1, p 333 An arbitrator can only be punished for filing an unstamped document 7 A L J 180 When an unstamped receipt was granted by a servant in the absence of the master, the latter cannot be convicted 8 C W. N 378 A certain entry in the creditor's book that the money lent would be paid on a certain date is not a bandnote A W N 1903, 174 175 Where there is no criminal intent a person should not be convicted 2 Pat L T 623 For a conviction under this section proof of dishonest intention even to the payment of ... Ind Cas 598=28 Cr ... nstrument chargeable ... 24 A L J 358=93 ... Cas 336

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* Certain word after this repealed by Act V of 1927 has been omitted
† Inserted by Act V of 1927

Penalty for failure to cancel adhesive stamp

63 Any person required by section 12 to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees

Penalty for omission to comply with provisions of section 27

64 Any person who, with intent to defraud the Government,—

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances, or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act,

shall be punishable with fine which may extend to five thousand rupees

Notes—R purchased certain property for Rs 20 000 paying Rs 1 000 in cash and having Rs 19,000 with the vendors to be drawn upon when necessary, but which was never paid Subsequently R retransferred the property to the vendor by a deed for Rs 1,000 making no mention of Rs 19,000 *Held*, that the vendor committed an offence 7 A L J 110 Mere non payment of the proper stamp duty does not make a person liable to prosecution under this section, unless it is proved that he had an intention to defraud the Government of the stamp duty 45 Ind Cas 375=19 Cr L J 515

Penalty for refusal to give receipt, and for devices to evade duty on receipts

65. Any person who,—

(a) being required under section 30 to give a receipt, refuses or neglects to give the same or

(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered,

shall be punishable with fine which may extend to one hundred rupees

Penalty for not making out policy or making one not duly stamped

66 Any person who—

(a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly [illegible]

[illegible] policy which is not duly stamped,

[illegible] o pay or allow in account any money upon, or in respect of any such policy,

shall be punishable with fine which may extend to two hundred rupees

Penalty for not drawing full number of bills or marine policies purporting to be in sets

67 Any person drawing or executing a bill of exchange "payable otherwise than on demand"* or a policy of marine insurance purporting to be drawn or executed in a set of two or more and not at the same time d[illegible] or executing [illegible] number of [illegible] policy purports the set to consist, shall [illegible] extend to one thousand rupees

68 Any person who—

* Inserted by Act 5 of 1927

(*b*) except for the purposes of such prosecution no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42

Notes —Where the Collector refers a matter to the Court for action under this section, there is nothing in the Act which requires the issue of notice to the person 93 Ind Cas 909=A I R 1926 Oudh 397 Where an instrument has been admitted in evidence, such admission should not, except as provided in this section be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped 1923 Nag 109

CHAPTER VII

Criminal Offences and Procedure

Penalty for executing, etc instrument not duly stamped

62 (1) Any person—

(*a*) drawing making, issuing endorsing or transferring or signing otherwise than as a witness, or presenting for acceptance, or payment or accepting paying or receiving payment of, or in any manner negotiating, any bill of exchange,* "payable otherwise than on demand"† or promissory note without the same being duly stamped , or

(*b*) executing or signing otherwise than as a witness any other instrument
duly stamped , or
any proxy not duly stamped ,
with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument, upon the persons who paid such penalty

(2) If a share warrant is issued without being duly stamped, the company issuing the same and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees

Notes —A document which is merely a petition to the Court informing it of an agreement into which the parties had orally entered out of Court to compromise a suit and praying for a decree in the terms of the compromise does not require to be engrossed upon the general stamp but only requires the ordinary Court fee label 15 A L J 846 "Accepting is a technical term and does not apply to the mere taking of a promissory note in one s favour from the debtor 'Presenting like accepting is also a technical term U B R (1892 1896) Vol I, p 312 , see also U B R (1892 ... 40 C 168
The mere ... R 1904 and
Or stamp ... considered
as a bond ... be punished
for filing an unstamped document 7 A L J 180 When an unstamped receipt was granted by a servant in the absence of the master the latter cannot be convicted 8 C W N 378 A certain entry in the creditor s book that the money lent would be paid on a certain date is not a bandnote A W N 1903 174 175 Where there is no criminal intent a person should not be convicted 2 Pat L T 623 For a conviction ... ment of
stamp duty
L J 166
with duty
Ind Cas 694=27 Cr L J 470=A I R 1926 All 389 73 Ind Cas 336

* Certain word after this repealed by Act V of 1927 has been omitted
† Inserted by Act V of 1927

Penalty for failure to cancel adhesive stamp

63 Any person required by section 12 to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees

Penalty for omission to comply with provisions of section 27

64 Any person who, with intent to defraud the Government,—

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances, or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act,

shall be punishable with fine which may extend to five thousand rupees

Notes—R purchased certain property for Rs 20 000 paying Rs 1 000 in cash and having Rs [illegible]
was never paid [illegible]
for Rs 1,000 [illegible]
an offence 7 [illegible]
make a person liable to prosecution under this section, unless it is proved that he had an intention to defraud the Government of the stamp duty 45 Ind Cas 375=19 Cr L J 515

Penalty for refusal to give receipt, and for devices to evade duty on receipts

65 Any person who—

(a) being required under section 30 to give a receipt refuses or neglects to give the same or

(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered,

shall be punishable with fine which may extend to one hundred rupees

Penalty for not making out policy or making one not duly stamped

66 Any person who—

(a) receives or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for such premium or consideration make out and execute a duly stamped policy of such insurance, or

(b) makes, executes or delivers out any policy which is not duly stamped or pays or allows in account or agrees to pay or allow in account any money upon or in respect of any such policy,

shall be punishable with fine which may extend to two hundred rupees

Penalty for not drawing full number of bills or marine policies purporting to be in sets

67 Any person drawing or executing a bill of exchange payable otherwise than on demand * or a policy of marine insurance purporting to be drawn or executed in a set [illegible] at the same time [illegible]

policy purports the set to co[illegible]
extend to one thousand rupees

68 Any person who—

* Inserted by Act 5 of 1927

Penalty for post dating bills, and

(a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, or

(b) knowing that such bill or note has been so post dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same, or

for other devices to defraud the revenue

(c) with the like intent, practices or is concerned in any act, contrivance, or device not specially provided for by this Act or any other law for the time being in force,

shall be punishable with fine which may extend to one thousand rupees

Notes—*Vide* 1 Weir 907, 1925 A I R 527 (Bom)

Penalty for breach of rule relating to sale of stamps and *for unauthorized sale*

69 (a) Any person appointed to sell stamp who disobeys any rule made under section 74, and

(b) any person not so appointed who sells or offers for sale any stamp (other than one anna or 'half an anna' * adhesive stamp),

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both

Institution and conduct of *prosecutions*

70 (1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially authorizes *in that behalf*

(2) The Chief Controlling Revenue-authority or any officer generally or specially authorized by it in this behalf, may stay any such prosecution or compound any such offence

(3) The amount of any such composition shall be recoverable in the manner *provided by section 48*

Notes—If there is fraud no action need be taken by the Collector under s 40 before a prosecution is sanctioned under s 70 of the Act U B R. (1902 1906) Vol I 307 For a prosecution of an offence under ss 30 and 65 the sanction of the Collector is indispensable and subsequent according of sanction cannot validate institution of such proceedings without sanction nor is the defect curable by s 587 28 Cr L J 780=A I R 1927 Nag 202=104 Ind Cas 108 *It is not* within the competence of private individuals to set criminal law in motion as regards offences under this Act 104 Ind Cas 108=28 C L J 780

Jurisdiction of Magistrates

71 No Magistrate other than a Presidency Magistrate or a Magistrate powers whose are not less than those of a Magistrate of the second class, shall try any offence under this Act

Place of trial

72 Every such offence committed in respect of any instrument may be tried in any district or presidency town in which such instrument is found as well as in any district or presidency town in which such offence might be tried under the Code of Criminal Procedure for the time being in force

CHAPTER VIII

Supplemental Provisions

Books, etc, to be *open to* inspection

73 Every public officer *having in his custody any registers books*, records papers, documents, or proceedings the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or

* These words have been inserted by Act V of 1906 s 3

omission in relation to any duty, shall at all reasonable times, permit any person authorized in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge

Powers to make rules relating to sale of stamps

74 The Local Government, subject to the control of the Governor General in Council, may make rules for regulating—

(*a*) the supply and sale of stamps and stamped papers,

(*b*) the persons by whom alone such sale is to be conducted, and

(*c*) the duties and remuneration of such persons

Provided that such rules shall not restrict the sale of one anna "or half an anna"* adhesive stamps

Power to make rules generally to carry out Act

75 The Governor General in Council may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof

Publication of rules

76 (1) All rules made under this Act other than rules made under section 74 shall be published in the *Gazette of India*, and all rules made under section 74 shall be published in the local Gazette.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

Delegation of certain powers

76 A † The Local Government may, by notification in the local official Gazette, delegate,—

(*a*) all or any of the powers conferred on it by sections 2 (9), 33 (3) (*b*), 70 (1), 74 and 78 to the Chief Controlling Revenue authority, and

(*b*) all or any of the powers conferred on the Chief Controlling Revenue authority by sections 45 (1) (2), 56 (1) and 70 (2) to such subordinate Revenue-authority as may be specified in the notification

Saving as to court fees

77 Nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment‡ for the time being in force relating to court fees

Act to be translated and sold cheaply

78 Every Local Government shall make provision for the sale of translations of this Act in the principal vernacular languages of the territories administered by it at a price not exceeding four annas per copy

79 "[Repealed by Act X of 1914]"

SCHEDULE I §

STAMP DUTY ON INSTRUMENTS

(*See section 3*)

Description of Instrument	Proper Stamp-duty
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value written or signed by or on behalf of, a debtor in order to supply evidence of such debt in	One anna

* The words quoted have been inserted by Act V of 1906, s 3

† Sec. 76 A newly inserted by Act IV of 1914

‡ Act VII of 1870

§ All additions to and modifications of the Schedules in the Act (1879), are in italics All the amendments by local enactment

any book (other than a banker s pass book) or on a separate piece of paper when such book or paper is left in the creditor s possession *provided that such acknowledgment does not contain any promise to pay the debt or any stipulation, to pay interest or to deliver any goods or other property*	

Notes —A document contained an entry to the following effect and it bore a stamp of one anna Out of Rs 22 3 0 due to Shaik by my late elder brother Ahmed, I have paid Re 1 the balance will be paid by instalments ' *Held* that the instrument was nothing more then an ackowledgment of a debt and was sufficiently stamped A W N 1883, 127 Whether a document amounts to an acknowledgment within the meaning of this article is a fact which depends in each case upon the intention of the writer 15 A 56 8 C 232 A *nikash* prepared and signed by a *gomosta* of a business showing a balance due by him to the owner of the business is not an acknowledgment of a debt 15 C 162 A memorandum or note drawn up between the parties as to a transaction which had just been settled between them is not an acknowledgment of debt 27 A 84=1 A L J 483 An account adjusted and balanced and signed as correct is not acknowledgment 16 C W N 945=39 C 789 An entry in creditor s account book, signed by the debtor and containing an acknowledgment of a debt is more than an acknowledgment of debt 4 L B R 330 (F B), see also 6 L L J 393=85 Ind Cas 290 A letter written in reply to another letter sending a statement of accounts and mentioning that the account is sent is correct is not an acknowledgment 49 M L J 1215 In deciding whether a given acknowledgment is one falling within Sch I, art 1, the question to be considered is whether it is given with the dominant inter [illegible] 46 M 948=74 Ind Cas 1029 This article [illegible] which does not contain any promise to pay t[illegible] book entries are not liable to stamp duty and [illegible] they are worth 29 Ind Cas 943=8 Bur L T 238 The schedule attached to the Stamp Act must be treated as exhaustive 20 C W N 923

2 ADMINISTRATION BOND including bond given under sections 56 of the Indian Succession Act, 1865 * section 6 of the Government Savings Banks Act 1873,† sec [illegible]	
(a) [illegible]	The same duty as a bond (No 15) for such amount
(b) in any other case	Five rupees
	Assam Bengal, Bombay, Burma C P Madras, Punjab and U P —Rupees ten
[illegible]	[illegible]s of administration will [illegible] Presidency of Bengal for [illegible] 1889 the words and [illegible] 1879 or Section 291 or [illegible] shall be substituted
3 ADOPTION DEED *that is to say*, any instrument (other than a Will) *recording an adoption* or conferring, or purporting to confer an authority to adopt	Ten rupees
	Assam Bengal Bombay C P and Punjab—Rupees twenty Madras—Rupees fifteen

* Act X of 1865
† Act V of 1873
‡ Act V of 1881
§ Act VII of 1889

Notes—Under the former Act such a deed of adoption was not required to be stamped *Vide* 13 B 280, 13 B 281

ADVOCATE, *See* ENTRY AS AN ADVOCATE (*No.* 30)

4 AFFIDAVIT, *including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing* ...	One rupee Assam, Bengal, Bombay, Burma, C. P Madras, Punjab and U. P—Two rupees
Exemptions Affidavit or declaration in writing when made— (*i*) as a condition of enrolment under the 'Indian Army Act, 1911*' "or the Indian Air Force Act, 1932"† (*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court, or (*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance	
5 ‡—AGREEMENT OR MEMORANDUM OF AN AGREEMENT—	
(*a*) If relating to the sale of a bill of exchange	Two annas Assam, C P Madras and U P—Three annas Bengal—Four annas. Bombay, Burma and Punjab—Four annas
(*b*) If relating to the sale of a Government security or share in an incorporated company or other body corporate,	Subject to a maximum of ten rupees, one anna for every Rs 10,000 or part thereof the value of the security or share Assam, C P Madras, and U P—"Subject to a maximum of fifteen rupees, one and half annas for every Rs 10,000 or part thereof of the security or share" Burma—"Subject to a maximum of twenty rupees, two annas for every Rs 10,000 or part thereof of the value of the security or share" Punjab— Subject to a maximum of fifteen rupees, two annas for every Rs 10,000 or part thereof of the value of the security or share'
(*c*) if not otherwise provided for	Eight annas Assam, Madras and U P—Twelve annas Burma, C P and Punjab—one rupee
[In Bengal and Bombay, read as follows — (*a*) if relating to the sale of a bill of exchange,	Four annas
(*aa*) if relating to the sale of a Government security,	Subject to a maximum of twenty rupees two annas for every Rs 10,000 or part thereof of the value of the security

* Substituted by Act XVIII of 1929

† Added by Act XIV of 1932

‡ The present Article No 5 has been substituted for the original Article No 5 by Act VI of 1910.

(*b*) if relating to the sale of a share in an incorporated Company or other body corporate,	Two annas for any Rs 5 000 or part thereof the value of the share
(*c*) If not otherwise provided for	One rupee
Exemptions	
Agreement or Memorandum of Agreement—	
(*a*) for or relating to the sale of goods or merchandise exclusively, not being a NOTE or MEMORANDUM chargeable under No 43	
(*b*) made in the form of tenders to the Government of India for or relating to any loan,	
(*c*) made under the European Vagrancy Act 1874 * section 17]	
[For Assam only	
(*d*) executed for service or for performance of work in any estate whether held by one person or by more persons than one as co owners and whether in one or more blocks and situated in Assam where the advance given under such agreement does not exceed fifty rupees	Four annas

Notes—Where an agreement for the sale of certain shares is contained in a number of letters which passed between the parties none of them requires to be stamped under art 5 (*a*) and they are not inadmissible in evidence for want of a stamp 13 M 255, see also 3 C 787, 4 L B R 324 An agreement to pay should be stamped under this article 15 C 150 A document whereby no rent is reserved

nowledgment mentions interest of a certain rate having been agreed upon but contains no stipulation to pay it must be treated as an agreement 25 B 773=2 Bom L R 1132 An instrument which acknowledges receipt of a certain sum of money and further in consideration of this payment, agrees to sell paddy at the harvest time

=5 Ind Cas 986

received and not in

stamp under clause

follows 'Account E B (the debtor) The year 1312 B S Interest on this amount at the rate of one anna per month per rupee Then followed the credit and debit entries *Held* that there was an implied promise to pay interest and the document ought to be stamped as an agreement or a memorandum of agreement with eight anna stamp 11 C W N 1122, see also 35 C 111=11 C W N 1120, an indemnity note to a railway company by consignee in respect of deliver

to produce the R

the execution of

the period of the

under this article

certain quantity c

Acknowledgment

in future must be stam

5 (c) 49 A 796=100 I

cotton in default to pay

of a present delivery of a certain quantity of cotton is not an agreement for sale of goods or merchandise If such an agreement is attested it falls within section 2, cl 5 (c) and must be stamped as bond 98 Ind Cas 631=A I R 1927 Nag 7

* Act IX of 1874

An instrument described as a hire purchase contract was entered into between A and B whereby one linotype machine was hired by the latter for 27 months upon terms and conditions set forth in the document The question arose whether this is to be stamped as an agreement or a conveyance *Held* upon the construction of the document that it is simply an agreement to hire the machinery in question with an option on the part of the hirer to purchase and as such it is liable to be stamped as an agreement within the meaning of Art 5, Cl (c) 24 C L J 93=20 C W N 1252=44 C 72 Where according to the course of business of a Bank the Bank before granting loans requires the borrower to make a declaration to the effect that he will not further encumber his property until the debt of the Bank is discharged in the confidential register in the form thereto annexed and to sign it *Held* that the document containing the declaration cannot be treated either as an agreement or as a memorandum of an agreement 28 Ind Cas 865

AGREEMENT TO LEASE
See LEASE (*No* 35)

6*—AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE that is to say any instrument [illegible] ty

where such deposit pawn or pledge has been made by way of security for the re payment of money advanced or to be advanced by way of loan or an existing or future debt—	
(*a*) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement	The same duty as a bill of exchange [No 13 (*b*)] for amount secured
(*b*) if such loan or debt is repayble not more than three months from the date of such instrument	Half the duty payable on a Bill of Exchange [No 13 (*b*)] for the amount secured

Exemption

Instrument of pawn or pledge of goods if unattested

6† AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE that is to say any instrument, evidencing an agreement relating to—

(1) the deposit of title deeds instruments constituting or being evidence of the title to any property whatever (other than a marketable security) or

(2) the pawn or pledge of movable property where such deposit pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—

(*a*) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement—

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* Act 6 has been substituted for the original by Act XV of 1904 s 8

† This new article has been substituted in Assam Bengal Madras and Punjab

		If drawn singly	If drawn in set of two for each part of the set	If drawn in set of three for each part of the set
		Rs A P	Rs A P	Rs A P
(i) when the amount of the loan or debt does not exceed	Rs 200	0 4 6	0 3 0	0 1 6
(ii) when it exceeds Rs 200 but does not exceed	400	0 9 0	0 4 6	0 3 0
Do 400 Do	600	0 13 6	0 7 6	0 4 6
Do 600 Do	800	1 2 0	0 9 0	0 6 0
Do 800 Do	1,000	1 6 6	0 12 0	0 7 0
Do 1 000 Do	1,200	1 11 0	0 13 6	0 9 0
Do 1,200 Do	1,600	2 4 0	1 2 0	0 12 0
Do 1 600 Do	2 500	3 6 0	1 11 0	1 2 0
Do 2 500 Do	5,000	6 12 0	3 6 0	2 4 0
Do 5,000 Do	7,500	*10 0 0	5 1 0	3 6 0
Do 7,500 Do	10,000	13 8 0	6 12 0	4 8 0
Do 10 000 Do	15 000	20 4 0	10 2 0	6 12 0
Do 15 000 Do	20 000	27 0 0	13 8 0	9 0 0
Do 20 000 Do	25 000	33 12 0	16 14 0	11 4 0
Do 25,000 Do	30 000	40 8 0	20 4 0	13 8 0
and for every additional Rs 10 000 or part thereof in excess Rs 30 000		13 8 0	6 12 0	4 8 0

(b) if such loan or debt is repayable not more than three months from the date of such instrument	Half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) for the amount secured
6† Agreement relating to deposit of title deeds, pawn or pledge that is to say, any instrument evidencing an agreement relating to—	
(1) the deposit of the title deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or	
(2) the pawn or pledge of movable property whether such deposit pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—	
(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement—	If drawn singly
when the amount of the loan or debt does not exceed Rs 200	Rs A P 0 3 0

* In Punjab and Madras read Rs 10 2 ans
† Article 6 was in this form as amended by U P Act IV of 1932

				Rs	A	P.
	Rs		Rs			
when it exceeds	200	but does not exceed	400			
,,	400	,,	600	0	8	0
,,	600	,,	800	0	12	0
,,	800	,,	1,000	1	0	0
,,	1,000	,,	1,200	1	4	0
,,	1,200	,,	1,600	1	8	0
,,	1,600	,,	2,500	2	0	0
,,	2,500	,,	5,000	3	0	0
,,	5,000	,,	7,500	6	0	0
,,	7,500	,,	10,000	9	0	0
,,	10,000	,,	15,000	12	0	0
,,	15,000	,,	20 000	18	0	0
,,	20,000	,,	25,000	24	0	0
,,	25,000	,,	30,000	30	0	0
				36	0	0
and for every additional Rs 10,000 or part thereof in excess of Rs 30,000				12	0	0

(*b*) if such loan or debt is repayable not more than three months from the date of such instrument — Half the duty payable on a loan or debt under clause (*a*) for the amount secured

7 APPOINTMENT IN EXECUTION OF — Fifteen rupees

. e — Assam, Bengal, Madras and Punjab—Twenty five rupees.

In U P it is amended thus—

(*a*) where the value of the property does not exceed Rs 1,000 — Fifteen rupees

(*b*) in any other case — Twenty five rupees

In Bombay and Burma it is thus—

7 APPOINTMENT IN EXECUTION OF A POWER, where made by any writing not being a Will—

(*a*) of trustees ... ... Fifteen rupees

(*b*) of any other property movable or immovable — Thirty rupees

Notes—Where the founder of a religious endowment makes a Will providing for succession to the office of *shebait* and gives the *punch* the power to enquire into the misconduct of a *shebait* and to remove him from the office and appoint a new *shebait* instead, the *punchanama* falls within this article and requires stamp of Rs 15 23 C W N 401=51 Ind Cas 884

8 APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—

(*a*) *where the amount does not exceed Rs. 1 000* — The same duty as a *Bond* (No 15) *for such amount*

Assam Bengal, Madras, and Punjab—The same duty as a Bottomry Bond (No 16) for such amount

(*b*) *in any other case* . . *Five rupees*

Assam, Burma C P, Madras and U P—Seven rupees eight annas

Bengal, Bombay and Punjab—Rupees ten only

Exemptions (*a*) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law (*b*) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent	
9 APPRENTICESHIP DEED, including every writing relating to the service or tuition of any apprentice clerk, or servant placed with any master to learn any profession trade or employment *not being* Articles of Clerkship (*No 11*)	Five rupees Assam, Burma, Madras and U P —Rupees seven and annas eight Bengal and Bombay—Rupees ten
Exemption Ins [illegible] a [illegible] ,* [illegible] or at the charge of any public charity	
10 ARTICLES OF ASSOCIATION OF A COMPANY	Twenty five rupees
Exemption *Article of any Association not formed for profit and registered under section 26 of the Indian Companies Act, 1882* † *See* also Memorandum of Association of a Company (*No 39*)	Assam C P, Madras, and U P —fifty rupees

This article is amended in Bengal as follows —

(*a*) Where the nominal share capital does not exceed one lakh of rupees—	Fifty rupees
(*b*) Where the nominal share capital exceeds one lakh of rupees— *Exemption*—Articles of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1913 See also Memorandum of Association of a company (No 39)	One hundred rupees

The article is amended in Bombay and Burma as follows —

(*a*) Where the company has no share capital or the nominal share capital does not exceed *Rs 2,500*	Twenty five rupees
(*b*) Where the nominal share capital exceeds Rs 2 500 but does not exceed Rs 1 00 000	Fifty rupees
(*c*) Where the nominal share capital exceeds Rs 1 00 000	One hundred rupees

The article is amended in the Punjab as follows —

(*a*) Where the authorized share capital does not exceed Rs 1,00 000	Twenty five rupees
(*b*) In other cases	Fifty rupees

Notes —*Vide* 22 A 131 = 1900 A W N 15

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* Act XIX of 1850 The former words were 'under Act XIX of 1850 'The Apprentices Act 1850,' is the short title of Act XIX of 1850—See the Indian Short Titles Act (XIV) of 1897

† Act VI of 1882 But now see Act VII of 1913

11 ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admis- [illegible] High Court	Two hundred and fifty rupees
[illegible] (*No* 23) [illegible] of Lease [illegible] Attorney [illegible] (*No* 48) [illegible] Adoption [illegible] (*No* 3)	Madras—Three hundred and seventy five rupees
12 AWARD, that is to say, any decision in writing by an arbitrator or umpire not *being an award directing a partition* on a reference made otherwise than by an order of the Court in the course of a suit—	
(*a*) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs 1,000	The same duty as a bond (*No 15*) for such amount
(*b*) in any other case	Five rupees C P—Seven rupees and eight annas
Exemption AWARD under *the* Bombay *District Municipal* Act, 1873,* section 81, or the Bombay *Hereditary Offices Act*, 1874,† section 18	

In Assam and Punjab clauses (*a*) and (*b*) are amended as follows —

(*a*) Where the amount of value of the property to which the award relates as set forth in such award, does not exceed Rs 1,000,	The same duty as a Bond (No 15) for such amount
(*b*) if it exceeds Rs 1,000 but does not exceed Rs 5,000	Seven rupees eight annas
and for every additional Rs 1,000 or part thereof in excess of Rs 5,000	Eight annas subject to a maximum of fifty rupees

In Bombay and Burma the duty payable is the same as on a bond subject to a maximum of Rs 20 and Rs 50 respectively In Madras and Bengal the article is amended as follows —

(*a*) where, etc	The same duty as a Bottomry Bond (No 16) for such amount
(*b*) if it exceeds Rs 1,000 but does not exceed Rs 5 000	Ten rupees
and for every additional Rs 1,000 or part there *of in excess of Rs 5,000*	Eight annas subject to a maximum *of fifty rupees*

In the United Provinces this article is amended as follows —

(*a*) where etc	the same duty as a bond (No 15) for such amount
(*b*) if it exceeds Rs 1,000 but does not exceed Rs 5000	Seven rupees eight annas
(*c*) in any other case	Ten rupees
Exemption Award under the Bombay District Municipal Act, 1901 section 160, or Bombay Hereditary Offices Act, 1874, section 18, or the United Provinces Municipalities Act II of 1916, section 324(1) or the United Provinces District Boards Act, 1922, section 190(1)	

* Bom Act VI of 1873

† Bom Act III of 1874.

Notes —An *ekrar* to refer matters to arbitration is an agreement and should be stamped as such. 40 C 219 = 17 C W N 395 ; 39 C 669 ; 18 Ind Cas 978 An award requires to be stamped under this section 20 Ind Cas 491 ; see also 78 Ind Cas 194

13 BILL OF EXCHANGE *as defined by s 2(2)** not being a Bond bank note or currency note—
(*a*) *
(*b*) † where payable otherwise than on demand, but not more than one year after date or sight—

	Rs	If drawn singly	If drawn in set of two for each part of the set	If drawn in set of three for each part of the set
		Rs A P	Rs A P	Rs A P
if the amount of the bill or note does not exceed .	200	0 3 0	0 2 0	0 1 0
if it exceeds Rs 200 and does not exceed	400	0 6 0	0 3 0	0 2 0
Do 400 Do	600	0 9 0	0 5 0	0 3 0
Do 600 Do	800	0 12 0	0 6 0	0 4 0
Do 800 Do	1,000	0 15 0	0 8 0	0 5 0
Do 1,000 Do	1,200	1 2 0	0 9 0	0 6 0
Do 1,200 Do	1,600	1 8 0	0 12 0	0 8 0
Do 1,600 Do	2,500	2 4 0	1 2 0	0 12 0
Do 2,500 Do	5 000	4 8 0	2 4 0	1 8 0
Do 5,000 Do	7,500	6 12 0	3 6 0	2 4 0
Do 7,500 Do	10 000	9 0 0	4 8 0	3 0 0
Do 10,000 Do	15,000	13 8 0	6 12 0	4 8 0
Do 15,000 Do	20 000	18 0 0	9 0 0	6 0 0
Do 20,000 Do	25,000	22 8 0	11 4 0	7 8 0
Do 25,000 Do	30,000	27 0 0	13 8 0	9 0 0
and for every additional Rs 10,000 or part thereof in excess of Rs 30,000		9 0 0	4 8 0	3 0 0
(*c*) where payable at more than one year after date or sight		The same duty as a Bond (No 15) for the same amount		

Notes —A document which was in fact a Bill of Exchange though it was loosely described as a hundi, was properly stamped under rule 6 of the Rules of the Governor General in Council when a portion of it appeared to have been written on each of three sheets of stamp paper of ... 23 ... right ... e or ... stru ... perty ... ange under Art 13 (b) 44 Ind Cas 109

14 BILL OF LADING (including a through bill of lading) — Four annas

Assam, Burma, Madras and U P —Six annas

Bengal, Bombay and Punjab—Eight annas

N B—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set

Exemptions

(*a*) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889† and are to be delivered at another place within the limits of the same port

(*b*) Bill of lading when executed out of British India, and relating to property to be delivered in British India

* Omitted by Act V of 1927
† Cl (*b*) of Art No 13 has been re enacted by Act I of 1912
† Act X of 1889, see now Act XV of 1908.

15 BOND [as defined by section 2(5)] not being a DEBENTURE (No 27) and not being otherwise provided for by this Act or by the Court fees Act, 1870*—	
where the amount or value secured does not exceed Rs 10	Two annas
where it exceeds Rs 10, and does not exceed Rs 50	Four annas
Do 50 do 100	Eight annas
Do 100 do 200	One rupee
Do 200 do 300	One rupee eight annas
Do 300 do 400	Two rupees
Do 400 do 500	Two rupees eight annas
Do 500 do 600	Three rupees
Do 600 do 700	Three rupees eight annas
Do 700 do 800	Four rupees
Do 800 do 900	Four rupees eight annas
Do 900 do. 1,000	Five rupees
and for every Rs 500 or part thereof in excess of Rs 1,000	Two rupees eight annas

See ADMINISTRATION BOND (No 2)
BOTTOMRY BOND (No 16)
CUSTOMS BOND (No 26)
INDEMNITY BOND (No 34)
RESPONDENTIA BOND (No 56)
SECURITY BOND (No 57)

Exemptions

Bond when executed by—

(*a*) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876 section 99, for the due performance of their duties under that Act,

(*b*) any person for the purpose of guaranteeing that the local income derived from private subscriptions to charitable dispensary or hospital or any other object of public utility, shall not be less than a specified sum per mensem

LOCAL AMENDMENTS

	Assam C P Punjab			Bengal Bombay and Burma			Madras			U P		
	Rs	A	P	Rs	A	P	Rs	A	P	Rs	A	P
Where the amount or value secured does not exceed Rs 10	0	2	0	0	2	0	0	2	0	0	2	0
Where it exceeds Rs 10 and does not exceed Rs 50	0	4	0	0	4	0	0	4	0	0	4	0
" 50 " 100	0	8	0	0	8	0	0	8	0	0	8	0
" 100 " 200	1	0	0	1	0	0†	1	4	0	1	0	0
" 200 " 300	1	14	0	2	4	0	1	14	0	1	8	0
" 300 " 400	2	8	0	3	0	0	2	8	0	2	0	0
" 400 " 500	3	2	0	3	12	0	3	2	0	2	8	0
" 500 " 600	4	8	0	4	8	0	4	8	0	3	4	0
" 600 " 700	5	4	0	5	4	0	5	4	0	4	0	0
" 700 " 800	6	0	0	6	0	0	6	0	0	4	12	0
" 800 " 900	6	12	0	6	12	0	6	12	0	5	8	0
" 900 " 1,000	7	8	0	7	8	0	7	8	0	6	4	0
and for every Rs 500 or part thereof in excess of Rs 1,000	3	12	0	3	12	0	3	12	0	3	12	0

* Act VII of 1870

† In Burma the fee as in Bombay only read Re 1-4 as for Re 1

Notes —The agreement in a lease to pay a certain thing on account of a balance for the previous year amounts to a bond and should be stamped as such under art 15 7 Bom L R 929 A formal renunciation of a claim to immovable property of the value of over Rs 100 is a release which required a five rupee stamp 7 N L R 56 A security bond taken on an order for stay of execution must be stamped in accordance with this article A I R 1925 Lah 552, 43 Ind Cas 376 A bond which cannot be charged with stamp duty by any other article must be stamped under this article 29 C W N 851=89 Ind Cas 289 (F B)

16 BOTTOMRY BOND, *that is to say* any instrument whereby the master of a sea going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage	The same duty as a Bond (No 15) for the same amount

The following amendments are made in Assam, Bengal, Madras and the Punjab —

where the amount or value secured does not exceed Rs 10,	Three annas
where it exceeds Rs 10 and does not exceed Rs 50,	Six annas
where it exceeds Rs 50 and does not exceed Rs 100,	Twelve annas
where it exceeds Rs 100 and does not exceed Rs 200	One rupee eight annas
where it exceeds Rs 200 and does not exceed Rs 300,	Two rupees four annas
where it exceeds Rs 300 and does not exceed Rs 400,	Three rupees
where it exceeds Rs 400 and does not exceed Rs 500,	Three rupees twelve annas
where it exceeds Rs 500 and does not exceed Rs 600,	Four rupees eight annas
where it exceeds Rs 600 and does not exceed Rs 700,	Five rupees four annas
where it exceeds Rs 700 and does not exceed Rs 800,	Six rupees
where it exceeds Rs 800 and does not exceed Rs 900,	Six rupees twelve annas
where it exceeds Rs 900 and does not exceed Rs 1,000,	Seven rupees eight annas
and for every Rs 500 or part thereof in excess of Rs 1,000	Three rupees twelve annas

17 [illegible]	Five rupees Assam Bengal Burma, Madras, Punjab and U P —Seven rupees eight annas
SEE also RELEASE (No 55), REVOCATION OF SETTLEMENT (No 58 B) SURRENDER OF LEASE (No 61) REVOCATION OF TRUST (No 64B)	

Notes —*Vide* 32 A 171=7 A L J 110=5 Ind Cas 797

18 [illegible] espect ... ate lot ... of any ... Civil ... other Revenue officer—	

(*a*) where the purchase money does not exceed Rs 10	Two annas Assam C 1 Madras, Punjab—Three annas Bengal Bombay and Burma—Four annas
(*b*) where the purchase money exceeds Rs 10 but does not exceed Rs 25	Four annas Assam C P Madras Punjab—Six annas Bengal, Bombay and Burma—Eight annas
(*c*) in any other case	The same duty as a Conveyance (No 23) for a consideration equal to the amount of the purchase money only

Notes—A certificate of sale granted to the purchaser of property sold by public auction subject to a mortgage is chargeable with stamp duty not only on the purchase money paid but also in respect of the principal sum due on the mortgage, the arrears of interest due thereon not being included 5 B 470

19 CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof or any other person either to any shares scrip or stock in or of any *incorporated* company or *other body corporate* or to become proprietor of shares scrip or stock in or of any *such* Company or *body* *See also* LETTER OR ALLOTMENT OF SHARES (*No 36*).	Two annas'*
20 CHARTER PARTY that is to say, any instrument (except an agreement for the hire of [illegible] or some [illegible] for the [illegible] *whether* [illegible]	One rupee Assam Bengal Bombay Burma, Madras Punjab U P—Two rupees
21 †	
22 COMPOSITION DEED that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors or under letters of license for the benefit of his creditors	Ten rupees Assam, Punjab U P—Twelve rupees eight annas *Bengal & Bombay—Twenty rupees* Burma and Madras—Fifteen rupees

Notes—14 Bom L R 506 24 Ind Cas 730=16 Bom L R 236

23 CONVEYANCE [*as defined by section 2 (10)*] not being a TRANSFER, *Charged or exempted under No 62* *where* the amount *or value* of the consideration for such conveyance as set forth therein does not exceed Rs 50	Eight annas

* The words within quotations have been substituted by Act 43 of 1923

† Article 21 has been omitted by Act V of 19 7 and now no duty his payable on cheque

	Rs		Rs	
where it exceeds 50 but does not exceed			100	
Do	100	do	200	One rupee
Do	200	do	300	Two rupees
Do	300	do	400	Three rupees
Do	400	do	500	Four rupees
Do	500	do	600	Five rupees
Do	600	do	700	Six rupees
Do	700	do	800	Seven rupees
Do	800	do	900	Eight rupees
Do	900	do	1 000	Nine rupees
and for every 500 rupees or part thereof in				Ten rupees
excess of Rs 1,000				Five rupees

					Assam Bengal Madras and Punjab			C P, Burma and Bombay *			U P		
where the amount or value of the consideration for such conveyance as set forth therein does not exceed				50	Rs	A	P	Rs	A	P	Rs	A	P
where it exceeds					0	12	0	0	8	0	0	8	0
Rs	50	but does not exceed Rs		100									
Do	100	Do		200	1	8	0	1	0	0	1	0	0
Do	200	Do		300	3	0	0	2†	0	0	2	0	0
Do	300	Do		400	4	8	0	4	8	0	3	0	0
Do	400	Do		500	6	0	0	6	0	0	4	0	0
Do	500	Do		600	7	8	0	7	8	0	5	0	0
Do	600	Do		700	9	0	0	9	0	0	6	8	0
Do	700	Do		800	10	8	0	10	8	0	8	0	0
Do	800	Do		900	12	0	0	12	0	0	9	8	0
Do	900	Do		1,000	13	8	0	13	8	0	11	0	0
and for every Rs 500 or Part thereof in					15	0	0	15	0	0	12	8	0
excess of				1 000									
Exemptions					7	8	0	7	8	0	7	8	0

Assignment of copyright by entry made under the Indian Copyright Act, 1847,‡ section 5

For Punjab only—

Prc ded h con a nce of mmo ble

Explanation —For the purpose of this proviso 'Notified Area' means an area in regard to which a notification has been issued or may hereafter be issued under s 241 of the Punjab Municipal Act, 1911 , and in which the total population is accord ng to the latest census is more than five thou sand in number

N B An additional duty 2 p c is payable in Calcutta Municipality

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* For Bombay Ahmedabad, Poona and Karachi *vide* Bom Act II of the 1932, s 18 *infra*.

† In Burma read Rs 2 8 as for Rs 2 0 as

‡ See now Act III of 1914

Notes —A *pavala* or a letter authorizing a person to receive from a third party a sum of money due to its writer amounts to a conveyance and should be stamped as such 4 Bom L R 951=27 B 150 A document which is styled as a release ... er a certain portion of ... rgain is a conveyance ... 0=32 B 509

See PARTNERSHIP (NO 46)	
24 COPY OR EXTRACT certified to be a true copy or extract by or by order of any public officer, and not chargeable under the law for the time being in force relating to court fess—	
(*i*) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee	Eight annas Assam, C P Madras, Punjab, U P *—Twelve annas Burma—one rupee. Bengal and Bombay—one rupee
(*ii*) in any other case ...	One rupee Assam, C P Madras, Punjab U P *—one rupee eight annas Bengal, Bombay and Burma—Two rupees
Exemptions	
(*a*) Copy of any paper which a public offier is expressly required by law to make or furnish for record in any public office or for any public purpose	
'(*b*) † Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces ‡ deaths or burials	

Notes —A copy of an extract from an entry in an account book filed under the provisions of ss 141 A and 142 B of the U P Code does not require to be stamped ... 4 Bom L R ...=26 B 522, see also 27 B 150=4 Bom L R 951

2 ... ATE of ... and in ... has been pa...	
(*a*) if the duty with which the original instrument is chargeable does not exceed one rupee eight annas	The same duty as is payable on the original
In Bengal read the following—	
(*b*) If the duty with which the original instrument is chargeable does not exceed two rupees	
(*c*) in any other case[not falling within the provisions of section 6 A]§	One rupee
Exemption	
Counterpart of any lease granted to a cultivator *when such lease is exempted from duty*	Assam, Madras, Punjab and U P —One rupee eight annss Bengal, Bombay and Burma—Two rupees

* ... d in U P in cases (*i*)and ... of a mortgage deed or ...) ... inal cl. (*b*) and (*c*) of the ...) ... ssam, Bengal Punjab and U P

26 CUSTOM-BOND—	
(*a*) *where the amount does not exceed Rs 1,000*	The same duty as a *Bond* (*No 15*) *for such amount* Assam, Bengal, Madras and Punjab—the same duty as a Bottomry bond (No 16) for such amount
(*b*) *in any other case*	*Five rupees*
27 * DEBENTURE (whether a mortgage debenture or not) being a marketable security transferable—	Assam, Bengal, Bombay, Burma Madras, Punjab and U P—Ten rupees
(*a*) by endorsement, or by a separate instrument of transfer	The same duty as a *Bond* (No 15) for the same amount Assam, Bengal, Madras and Punjab—The same duty as a Bottomry Bond (No 16) for the same amount
(*b*) by delivery	The same duty as a conveyance (No 23) for a consideration equal to the full amount of the debenture
In U P add the following :—	
Where the face amount of the debenture does not exceed Rs 100	One rupee four annas
Where it exceeds Rs 100 but does not exceed Rs 200	Two rupees eight annas
Where it exceeds Rs 200	The same duty as a Conveyance (No 23) for a consideration equal to the face amount of the debenture
Explanation—The term Debenture includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty	
Exemption A debenture issued by an incorporated Company or other body corporate in terms of a registered mortgage deed duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the Company or body borrowing make over, in whole or in part, their property to trustees for the benefit of the debenture holders, provided that the debentures so issued are expressed to be issued in terms of the said mortgage deed *See* also Bond (No 15) and sections 8 and 55	
DECLARATION OF ANY TRUST.—*See* [illegible]	
28	One anna
of any goods laying in any dock or port, or in any warehouse in which goods are stored	

* Article 27 as it now stands, has been substituted for the Original Article 27 by Act V of 1910

or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf on the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees	
DEPOSIT OF TITLE-DEEDS —"*See* Agreement relating to the deposit of Title-deeds, Pawn or Pledge (*No 6*)" *	
DISSOLUTION OF PARTNERSHIP S..	
	One rupee Assam, Burma, Madras—Two rupees Bengal, Bombay, Punjab and U P —Five rupees
58) ... 25)	
KIL OF dian e of powers conferred on such Court by Letters Patent or by the Legal Practitioners Act 1884‡—	
(*a*) in the case of an Advocate or Vakil	Five hundred rupees Assam, Bengal and the Punjab—Seven hundred and fifty rupees Madras—Six hundred and twenty-five rupees
(*b*) in the case of an Attorney	Two hundred and fifty rupees Assam, Bengal, Bombay, Punjab, and U P —Five hundred rupees Madras—Three hundred and twelve rupees and annas eight only
Exemption Entry as an advocate, vakil or attorney on the roll of any High Court when he has	
	Five hundred rupees
Exemption Entry of an advocate or pleader on the roll of the High Court when he has previously been enrolled in a High Court	

Notes —One B at the time of his enrolment as an Attorney of the High Court, paid stamp duty of Rs 250 under art 27, Sch I of Act I of 1879 He had not previously paid the duty of Rs 250 for article of clerkship not having served his

* The words quoted above have been substituted for the words and figure *see Agreement by way of equitable mortgage* (*No 6*), by Act XV of 1904, s 8(2)"
† Inserted by Act 38 of 1926
‡ Act IX of 1884

26 CUSTOM BOND—	
(*a*) *where the amount does not exceed Rs 1,000*	The same duty as a *Bond* (*No 15*) *for such amount* Assam, Bengal, Madras and Punjab—the same duty as a Bottomry bond (No 16) for such amount
(*b*) *in any other case*	*Five rupees* Assam, Bengal, Bombay Burma Madras, Punjab and U P—Ten rupees
27 * DEBENTURE (whether a mortgage debenture or not) being a marketable security transferable—	
(*a*) by endorsement or by a separate instrument of transfer	The same duty as a *Bond* (No 15) for the same amount Assam Bengal Madras and Punjab—The same duty as a Bottomry Bond (No 16) for the same amount
(*b*) by delivery	The same duty as a conveyance (No 23) for a consideration equal to the full amount of the debenture
In U P add the following —	
Where the face amount of the debenture does not exceed Rs 100	One rupee four annas
Where it exceeds Rs 100 but does not exceed Rs 200	Two rupees eight annas
Where it exceeds Rs 200	The same duty as a Conveyance (No 23) for a consideration equal to the face amount of the debenture
Explanation—The term Debenture includes any interest coupons attached thereto but the amount of such coupons shall not be included in estimating the duty	
Exemption A debenture issued by an incorporated Company or other body corporate in terms of a registered mortgage deed duly stamped in respect of the full amount of debentures to be issued thereunder whereby the Company or body borrowing make over, in whole or in part their property to trustees for the benefit of the debenture holders, provided that the debentures so issued are expressed to be issued in terms of the said mortgage deed *See* also Bond (No 15) and sections 8 and 55	
DECLARATION OF ANY TRUST—*See* [illegible]	
28 [illegible]	One anna

* Article 27 as it now stands has been substituted for the Original Article 27 by Act V of 1910

or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf on the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees	
DEPOSIT OF TITLE-DEEDS—"See Agreement relating to the deposit of Title ... (No 6)" *	
	One rupee Assam, Burma, Madras—Two rupees Bengal, Bombay Punjab and U P—Five rupees
58) ... r (No 25) ... TE, VAKIL ... ROLL OF ... the Indian ... exercise of powers conferred on such Court by Letters Patent or by the Legal Practitioners Act 1884†—	
(a) in the case of an Advocate or Vakil	Five hundred rupees. Assam, Bengal and the Punjab—Seven hundred and fifty rupees Madras—Six hundred and twenty-five rupees
(b) in the case of an Attorney	Two hundred and fifty rupees Assam, Bengal, Bombay, Punjab, and U P—Five hundred rupees Madras—Three hundred and twelve rupees and annas eight only
Exemption Entry as an advocate, vakil or attorney on the roll of any High Court when he has ...	
	Five hundred rupees
Exemption Entry of an advocate or pleader on the roll of the High Court when he has previously been enrolled in a High Court	

Notes—One B at the time of his enrolment as an Attorney of the High Court, paid stamp duty of Rs 250 under art 27, Sch I of Act I of 1879 He had not previously paid the duty of Rs 250 for article of clerkship not having served his

... d for the words and figure see ... Act XV of 1904, s 8(2)"

26 CUSTOM-BOND—	
(a) *where the amount does not exceed Rs 1,000*	The same duty as a *Bond* (*No 15*) *for such amount* Assam, Bengal, Madras and Punjab—the same duty as a Bottomry bond (No 16) for such amount
(b) *in any other case*	*Five rupees*
27 * DEBENTURE (whether a mortgage debenture or not) being a marketable security transferable—	Assam, Bengal, Bombay, Burma Madras, Punjab and U P—Ten rupees
(a) by endorsement, or by a separate instrument of transfer	The same duty as a *Bond* (No 15) for the same amount Assam Bengal, Madras and Punjab—The same duty as a Bottomry Bond (No 16) for the same amount
(b) by delivery	The same duty as a conveyance (No 23) for a consideration equal to the full amount of the debenture
In U P add the following —	
Where the face amount of the debenture does not exceed Rs 100	One rupee four annas
Where it exceeds Rs 100 but does not exceed Rs 200	Two rupees eight annas
Where it exceeds Rs 200	The same duty as a Conveyance (No 23) for a consideration equal to the face amount of the debenture
Explanation—The term Debenture includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty	
Exemption A debenture issued by an incorporated Company or other body corporate in terms of a registered mortgage deed duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the Company or body borrowing make over, in whole or in part, their property to trustees for the benefit of the debenture holders provided that the debentures so issued are expressed to be issued in terms of the said mortgage deed *See* also Bond (No 15) and sections 8 and 55	
DECLARATION OF ANY TRUST —*See* Trust (*No 64*)	
28 DELIVERY ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods laying in any dock or port, or in any warehouse in which goods are stored	One anna

* Article 27 as it now stands has been substituted for the Original Article 27 by Act V of 1910

(*a*) whereby such lease, the rent is fixed, and no premium is paid or delivered—	
(*i*) *where the* lease purports to be for a term of less than one year ,	The same duty as a BOND (No 15) for the whole amount payable or deliverable under such lease
(*ii*) *where the* lease purports to be for a term of not less than one year, but not more than three years	The same duty as a BOND (No 15) for the *amount or value of the* average annual rent reserved
(*iii*) *where the* lease purports to be for a term *in excess of* three years	The same duty as a CONVEYANCE (No 23) for a consideration equal to the amount or value of the average annual rent reserved
(*iv*) *where the* lease does not purport to be for any definite term	The same duty as a CONVEYANCE (No 23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long
(*v*) where the lease purports to be in perpetuity	The same duty as a CONVEYANCE (No 22) for a consideration equal to one fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease
(*b*) where the lease is granted for a fine or premium *or for money advanced*, and where no rent is reserved	The same duty as a CONVEYANCE (No 23) for a consideration equal to the amount or value of such fine or premium *or advance* as set forth in the lease
(*c*) where the lease is granted for fine or premium *or for money advanced* in addition to rent reserved	The same duty as a CONVEYANCE (No 23) for a consideration equal to the amount or value of such fine or premium *or advance* as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium *or advance* had been paid or delivered
	Provided that in *any case* when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed the duty on such lease shall not exceed eight annas *

Exemptions

(*a*) Leas executed in the case of a cultivator *and for the purposes of cultivation* (*including a lease of trees for the production of food or drink*) without payment or delivery of any fine or premium when a definite term is expressed and such term does not exceed one year or when the average annual rent reserved does not exceed one hundred rupees

* In Bombay read 'one rupee'

(*l*) leases of fisheries granted under the Burma Fisheries Act 1875* *or the Upper Burma Land and Revenue Regulation, 1889*†

LOCAL AMENDMENTS

Description of Instrument	Proper Stamp duty	
	Assam, Bengal Madras and Punjab	U P
35 LEASE including and under lease or sub-lease and any agreement to let or sublet—		
(*a*) whereby such lease the rent is fixed and no premium is paid or delivered—		
(*i*) where the lease purports to be for a term of less than one year,	The same duty as a Bottomry Bond (No 16) for the whole amount payable or deliverable under such lease	The same duty as a Bond (No 15) for the whole amount payable or deliverable under such lease
(*ii*) where the lease purports to be for a term of not less than one year, but not more than five years,	The same duty as a Bottomry Bond (No 16) for the amount or value of the average amount rent reserved	The same duty as a Bond (No 15) for the amount or value of the average annual rent reserved
(*iii*) where the lease purports to be for a term exceeding five years and not exceeding ten years	The same duty as a conveyance (No 23) for a consideration equal to the amount or value of the average annual rent reserved	The same duty as a conveyance (No 23) for a consideration equal to the amount or value of the average annual rent reserved
(*iv*) where the lease purports to be for a term exceeding ten years but not exceeding twenty years	The same duty as a conveyance (No 23) for a consideration equal to twice the amount or value of the average annual rent reserved	The same duty as in Assam, Bengal, etc
(*v*) where the lease purports to be for a term exceeding twenty years but not exceeding thirty years	The same duty as a conveyance (No 23) for a consideration equal to three times the amount or value of the average annual rent reserved	The same duty as in Assam, Bengal etc.

* Act VII of 1875

† Regulation III of 1889

Description of Instruments	Proper Stamp duty.	
	Assam, Bengal, Madras and Punjab	U P
(*vi*) where the lease purports to be for a term exceeding thirty years, but not exceeding one hundred years,	The same duty as a conveyance (No 23) for a consideration equal to four times the amount or value of the average annual rent reserved	The same duty as in Assam, Bengal etc
(*vii*) where the lease purports to be for a term exceeding one hundred years or in perpetuity,	The same duty as a conveyance (No 23) for a consideration equal in the case of a lease granted solely for agricultural purposes to one-tenth and in any other case to one sixth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease [In Madras it is one sixth]	The same duty as in Assam, Bengal, etc
(*viii*) where the lease does not purport to be for any definite term,	The same duty as a conveyance (No 23) for a consideration equal to three times the amount or value of the average annual rents which would be paid or delivered for the first ten years if the lease continued so long	The same duty as in Assam, Bengal, etc
(*b*) where the lease is granted for a fine or premium, or for money advanced and where no rent is reserved,	The same duty as a conveyance (No 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease	The same duty as in Assam, Bengal etc
(*c*) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved,	The same duty as a conveyance (No 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered: Provided that, in any case when an agreememt to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subse	The same duty as in Assam, Bengal, etc

Description of Instruments	Proper Stamp Duty	
	Assam, Bengal, Madras and Punjab	U P
	quently executed, the duty on such lease shall not exceed twelve annas	
Exemptions (*a*) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees In this exemption a lease for the purposes of cultivation shall include a lease of lands for cultivation together with a homestead or tank (*b*) Leases of fisheries granted under the Burma Fisheries Act, 1905 * or the Upper Burma Land and Revenue Regulation, 1889 †		

Explanation

When a lessee undertakes to pay any recurring charge, such as Government revenue, the landlord s share of cesses, or the owner's share of municipal rates or taxes which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent

Notes —A *patta* for one year and reserving a rent of less than one hundred rupees requires neither stamp nor registration. L R 4 A 298 An agreement to pay the shop rent at Rs 60 per month and to pay the said rent at Rs 2 per day creates a monthly tenancy within the provision of Clause (a) 46 C 804=23 C W N 398=51 Ind Cas 221 An agricultural lease is exempt from Stamp duty under exemption (a) 44 Ind Cas 109 In a lease of certain lands for a term of five years, the rent reserved was a moiety of the produce for Rs 100 per year and the lessee agreed to pay Rs 1680 to the lessor for Government assessment A question having arisen whether the lease was to be valued at Rs 100 or Rs 116 8 asunder this art, it was held that the value of lease for the stamp purposes was to be taken at Rs 100 and not at Rs 116-8 as 17 Bom L R 320=39 B 334=28 Ind Cas 584 A lease for a fruit tree is exempt from Stamp duty 15 B 73, see also 28 Ind Cas 584=39 B 434

* Bur Act III of 1905 † Act III of 1889

36 LETTER OF ALLOTMENT OF SHARES, in any Company or proposed Company or in respect of any loan to be raised by any Company or proposed Company.	"two annas "*
See also Certificate or other Document (No 19)	
37 LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn	' two annas "
LETTER OF GUARANTEE—*See* agreement (*No 5*)	
38 LETTER OF LICENCE, that is to say any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion	Ten rupees Assam, Burma Punjab, and U P.—Twelve rupees and annas eight only Bengal and Madras—Fifteen rupees
39	
	Fifteen rupees
Act, 1882 †	Assam Bengal, Bombay, Burma, C P, Madras, Punjab, and U. P—Rupees Thirty
(*b*) if not so accompanied	Forty rupees
In Bengal article shall be substituted —	Assam, Bombay, Burma, C P, Madras, Punjab and U. P—Eighty rupees
"(*b*) if not so accompanied—	
(*i*) where the nominal share capital does not exceed one lakh of rupees—	Eighty rupees
(*ii*) where the nominal share capital exceeds one lakh of rupees—	One hundred and thirty rupees "
Exemption Memorandum of any Association not formed for profit and registered under section 26	
40.	
Mortgage of a Crop (No 41) Respondentia bond (No 56) or Security bond (No 57)—	
(*a*) When possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ,	The same duty as a Conveyance (No 33) for a consideration euqal to the amount secured by such deed
(*b*) when§ possession is not given or agreed to be given as aforesaid	The same duty as a bond (No 15) for the amount secured by such deed Madras—' The same duty as a Bottomry Bond (No 16) for the amount secured by such deed "
Explanation—A mortgagor who gives to the mortgagee a power of attorney to collect rents or a lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this article	

* The words within quotations have been substituted by Act 43 of 1923.
† Act VI of 1882 But now see Act VII of 1913
‡ The words quoted are substituted for the words *'an agreement to mortgage'* by Act XV of 1904, s 8 (4)
§ Here the words *"at the time of execution"* are omitted by Act XV of 1904, *Ibid.*

(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above mentioned purpose, for every sum secured not exceeding Rs 1,000	Eight annas Assam, Bengal, Madras, Punjab and U P.—Twelve annas Bombay—One rupee
and for every Rs 1,000 or part thereof secured in excess of Rs 1,000	Eight annas Assam, Madras, Punjab and U P —Twelve annas Bengal and Bombay—One rupee

Exemptions

Where the principal or primary security is duly stamped—

(1) Instruments executed by persons taking advances under the Land Improvement Loans Act, 1883 * or the Agriculturists Loans Act, 1884 † or by their sureties as security for the repayment of such advances

(2) Letters of hypothecation accompanying a bill of exchange.‡

Notes.—A *marufut* is a counterpart of a lease or a deed executed by a tenant promising certain rent, and where the deed contains a special clause creating a charge over the tenant's improvement in favour of the landlord for arrears of rent it must be stamped both as a counterpart and as a mortgage 33 M L J 693 (F B)

Exemption (2)—*Vide* 23 C W N 534=51 Ind Cas 88=29 C L J 205

41. MORTGAGE OF A CROP, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—	
(a) when the loan is repayable not more than three months from the date of the instrument— for every sum secured not exceeding Rs 200—	One anna Assam, Bengal and Punjab—one and a half anna. Bombay, Burma and Madras—Two annas
and for every Rs 200 or part thereof secured in excess of Rs 200	One anna Assam, Bengal and Punjab—one and a half anna Bombay, Burma and Madras—two annas
(b) when the loan is repayable more than three months but not more than "eighteen months"§ from the date of the instrument— for every sum secured not exceeding Rs 100	"Two annas" ‖ Assam Madras and Punjab—*Three annas* Bengal, Bombay and Burma—Four annas
and for every Rs 100 or part thereof secured in excess of Rs 100 . .	"Two annas"‖ Assam, Punjab and Madras—Three annas Bengal, Bombay and Burma—Four annas

* Act XIX of 1883 † Act XII of 1884

‡ Exemption (3) in Art 40 is omitted by Act XV of 1904, s 8 (4)

§ These words have been substituted for the words "*one year*" by Act V of 1906, s 7 (2)

‖ Substituted for "*four annas*" by s 8 (5), Act XV of 1904

42 NOTARIAL ACT, that is to say, any instrument endorsement, note, attestation, certificate or entry *not being a* PROTEST (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public— ..	One rupee Assam, Bengal, Bombay, Burma, Punjab and U P —Two rupees Madras—One rupee and eight annas
See also PROTEST OF BILL OR NOTE (No 50)	
"43 *	
principal—	
(*a*) of any goods exceeding in value twenty rupees	Two annas Assam, Madras, Punjab and U P —Three annas Bengal Bombay & Burma—Four annas
(*b*) of any stock or marketable security exceeding in value twenty rupees (not being a Government security) † In Bengal and Bombay—	Bengal Bombay—Two annas for every Rs 5,000 or part thereof the value of the stock or security Subject to a maximum of ten rupees ‡ one anna§ for every Rs 10,000 or part thereof the value of the stock or security"
(*bb*) of a Government security ,	Subject (to a maximum of twenty rupees two annas for every 10,000 rupees or part thereof the value of the security)
44 NOTE OF PROTEST BY THE MASTER OF A SHIP.	Eight annas Assam, Bengal Bombay, Burma, Madras and U P —One rupee
See also PROTEST BY THE MASTER OF A SHIP (No 51)	
ORDER FOR THE PAYMENT OF MONEY—	
See BILL OF EXCHANGE (No 13)	
45. PARTITION—Instrument of [as defined by s 2(15)]	The same duty as a BOND (No 15)‖ for the amount of the value or the separated share or shares of the property *N B* —The largest share remaining *after the property is partitioned* (or if there are two or more shares of equal value, and not smaller than any of the other shares than one of such equal shares) shall be deemed to be that from which the other shares are separated *Provided always that*— (*1*) when an instrument of partition containing an agreement to divide property in severalty

* The present Art 43 has been substituted for the original by Act VI of 1910

† In Bombay the words within brackets have been inserted

‡ In Assam, Bengal, Madras, Punjab and U. P read "fifteen rupees" for "ten rupees" and in Burma read Rs. 20 for Rs. 10

§ In Assam, Bengal, Bombay, Burma, Madras, Punjab and U. P read "two annas" for "one anna"

‖ Read Bottomry bond in Madras.

is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be *reduced by the amount of* duty paid in respect of the first instrument, but shall not be less than eight annas,*

(*b*) where land is held on Revenue Settlement for a period not exceeding thirty years, and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue;

(*c*) where a final order for effecting a *partition* passed by any Revenue-authority or any civil Court or an award by an arbitrator directing a partition is stamped with the stamp required for an instrument of partition in pursuance of such order or award, is subsequently executed, the duty on such instrument shall not exceed eight annas.

Notes.—Transfer by trustee to beneficiary where the trustee and the beneficiaries are brothers is charged under this article 47 B 321=25 Bom L R 112 The words "final order" in clause (*a*) refer to the final order of the lowest Court of original jurisdiction empowered to give an order for effecting a partition at the time it is passed 12 A L J 113=36 B 137=23 Ind Cas 98

46 PARTNERSHIP—
A —INSTRUMENT OF—
(*a*) where the capital of the partnership does not exceed Rs 500 — Two rupees eight annas †
(*b*) in any other case ... — Ten rupees ‡
B —DISSOLUTION OF — Five rupees.§

"PAWN OR PLEDGE—*See* AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No 6)"‖

47 POLICY OF INSURANCE—
"A"—SEA-INSURANCE (*See* section 7)—

* Read twelve annas in Assam, Madras, Punjab and United Provinces and Re 1 in Bombay and Bengal
† In Assam, Bengal, Bombay, Burma and Madras read "five rupees" and in U. P read "three rupees twelve annas" for "two rupees eight annas"
‡ In Assam, Bengal, Bombay, Burma and Madras read "twenty rupees" for "ten rupees"
at rupees fifteen and a new
nd annas eight for cases where
s 8 (6)

(1) for or upon any voyage—	If drawn singly	If drawn in duplicate for each part
(*i*) where the premium or consideration does not exceed the rate of two annas or one eighth per centum of the amount insured by the policy : ...	One anna	Half an anna
(*ii*) in any other case in respect of every full sum of "one thousand and five hundred rupees"* and also any fractional parts of one thousand and five hundred rupees insured by the policy .	'One anna "*	"Half an anna".*
(2) for time—		
(iii) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy—		
where the insurance shall be made for any time not exceeding six months ,	Two annas	One anna
where the insurance shall be made for any time exceeding six months, and not exceeding twelve months	Four annas	Two annas
(B)—†"Fire Insurance and other classes of [illegible]		
(1) in respect of an original policy—		
(i) when the sum insured does not exceed Rs 5,000	Eight annas	
(ii) in any other case ..	One rupee.	
and		
(2) in respect of each receipt for any payment of a premium on any renewal of an original policy	[illegible]	
C—ACCIDENT and SICKNESS INSURANCE—		
(*a*) against railway accident valid for single journey only	One anna.	
Exemption		
When issued to a passenger travelling by the intermediate or the third class in any railway		
(*b*) in any other case for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs 1,000, and also where such amount exceeds Rs 1,000 for every Rs 1,000, or part thereof	Two annas "Provided that, in case of a policy of insurance against death by accident when the annual premium payable does not exceed Rs 2 8 as per Rs 1,000 the duty on such instrument shall be one anna for every Rs 1,000 or part thereof of the maximum amount which may become payable under it "§	

* In Assam, Bengal, Bombay, Burma Madras and U P read rupees Te[illegible]

† In Art 47, division A and B have been substituted for the orginal by Act [illegible] of 1906, s 7 (3)

‡ The words within quotations have been added by Act 43 of 1923

§ Inserted by Act 18 of 1928

CC *—Insurance by way of indemnity against liability to pay damages on account of accident to workmen employed by or under the insurer or against liability to pay compensation under the Workmen's Compensation Act, 1923 for every Rs 100 or part thereof payable as premium	One anna	
†D —Life Insurance or other insurance not specifically provided for, except such a Re-Insurance as is described in Division E of this article—	If drawn singly	If drawn in duplicate for each part—
(i) for every sum insured not exceeding Rs 250	Two annas—	One anna
(ii) for every sum exceeding Rs 250 but not exceeding Rs 1,000	Four annas—	Two annas
(iii) for every sum insured exceeding Rs 500 but not exceeding Rs 1,000 and also for every Rs 1,000 or part thereof in excess of Rs 1,000	Six annas—	Three annas

Exemption.

Policies of life insurance granted by Director General of Post offices in accordance with rules for Postal Life Insurance issued under the authority of the Governor General in Council, or

E - RE INSURANCE by an Insurance Company, which has granted a POLICY "of the nature specified in Division A or Division B of this article " ‡ with another Company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby	One quarter of the duty payable in respect of the original insurance but not less that one anna or more than one rupee
General Exemption	
(a) Letter of cover or engagement to issue a policy of insurance Provided that unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned	

Notes —A provident society issued the certificate of membership in the following terms — 'you have on condition of your conforming to the rules and regulations of this society from time to time in force, insured your life in the class of this society at the age of, etc *Held*, that the certificate did not come under art. 17 but fell under this article 3 Bom L R 43=25 B 376

Policy of Sea Insurance —*Vide* 24 Bom L R 820=67 Ind Cas 965

48 POWER OF ATTORNEY [*As defined by s 2* (21)] not being a PROXY (No 52)—	
(a) when executed for the sole purpose of procuring the registration *of one or more documents* in relation to a single transaction, *or for admitting excution of one or more such documents* ..	Eight annas, Assam, C P, Madras—Twelve annas. Bengal, Bombay, Burma, and Punjab—One rupee

* Insered by Act 15 of 1925
† Inserted by Act XVIII of 1928
‡ The words within quotations have been substituted by Act 43 of 1923

(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882*,	Eight annas Assam, Bengal Madras, Bombay, Burma, Punjab—One rupee C P—Eight annas
(c) when authorizing one person or more to act in a single transaction other than *the case* mentioned in *clause* (a),	One rupee Assam, Madras—One rupees eight annas Bengal, Bombay, Burma and Punjab—Two rupees C P—One rupee eight annas
(d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally,	Five rupees Assam, C P, Madras—Seven rupees eight annas Bengal Bombay, Burma & Punjab—Ten rupees
(e) *when authorizing more than five but not* more than ten persons to act jointly and severally in more than one transaction or generally,	Ten rupees Assam C P, Madras—Fifteen rupees Bengal, Bombay, Burma and Punjab—Twenty rupees
(f) when given for consideration, and authorizing the attorney to sell any immovable property,	The same duty as a CONVEYANCE (No 23) for the amount of the consideration
(g) in any other case	One rupee for each person authorized Assam C P Madras—one rupee eight annas for each person authorized Bengal, Bombay, Burma, Punjab—Two rupees for each person authorized *N B*—The term 'registration includes every operation incidental to registration under the Indian Registration Act, 1877 †
Explanation—For the purposes of this article, more persons than one when belonging to the same firm shall be deemed to be one person	

Notes—A power of attorney, which enables the agent to receive a judgment due to his principal, but which in prosecution of this object authorizes the agent not only to take out execution of the decree already obtained but also if necessary to institute a fresh suit against the judgment debtor for the recovery of the debt falls under clause (d) 3 Bom L R 890 Stamp duty payable on power of attorney is determined not by the number of persons executing the power but by the number of agents appointed A I R 1925 Oudh 132

‡49 PROMISSORY NOTE [*is defined by section* 2(22)]	
(a) when payable on demand—	
(i) when the amount or value does not exceed Rs 250,	One anna
(ii) when the amount or value exceeds Rs 250 but does not exceed Rs 1,000,	Two annas
(iii) In any other case,	Four annas
(b) when payable other than on demand	The same duty as a Bill of Exchange (No 13) for the same amount payable otherwise than on demand

* Act XV of 1882

† Act III of 1877 [but *see* now the new Registration Act (XVI of 1908) whereby the Act of 1877, No III, has been repealed in *toto*]

‡ Substituted by Act 43 of 1923

Notes —A promissory note does not lose its character as such merely because it contains a promise to pay at a certain place 4 Bom L R 428

50 PROTEST OF BILL OR NOTE, that is to say, any declaration in writing made by a Notary Public or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note	One rupee Assam Bengal, Bombay, Burma, Madras, Punjab and U P — Two rupees
51. PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such	One rupee Assam, Bengal, Bombay, Burma Madras and U P —Two rupees
See also—NOTE OF PROTEST BY THE MASTER OF A SHIP (No 44)	
52 PROXY empowering any person to vote at any one election of the member of a District or Local Board or of a body of municipal commissioners or at any one meeting of (*a*) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable (*b*) a local authority, or (*c*) proprietors, members or contributors to the funds of any institution	'Two annas' *
53 RECEIPT [*as defined by s* 2(23)] for any money or other property, the amount or value of which exceeds twenty rupees	One anna
Exemptions	
Receipt—	
(*a*) endorsed on or contained in any instrument duly stamped, 'or any instrument exempted, † under the proviso to s 3 (instruments executed on behalf of the Government) ' or any cheque or bill of exchange payable on demand † acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money interest, or annuity or other periodical payment thereby secured ,	
(*b*) for any payment of money without consideration ,	
(*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St George and Bombay) of Inam land ,	
(*d*) for pay or allowances by non commissioned officers or "soldiers or airmen ‡ of His Majesty's military or air force‡ when serving in such capacity, or by mounted police constables ,	

* The words within quotations have been added by Act 43 of 1923
† Substituted or inserted by Act XVIII of 1928
‡ Substituted by Act 10 of 1927

(e) given by holders of family certificates in cases where the person, from whose pay or allowances the sum comprised in the receipt has been assigned is a non commissioned officer, "soldier or airmen * of "any of the said forces"* and serving in such capacity ,	
(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their services as such non-commissioned officers, "soldiers or airmen,' * and not serving the Government in any other capacity ,	
(g) given by a headman or lambardar for land revenue or taxes collected by him ,	
(h) given for money or securities for money deposited in the hands of any banker, to be accounted for	
Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for	
Provided also that this exemption shall not extend to a receipt or acknowledgment *for any sum paid or deposited for, or* upon a letter of allotment of a share or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security	
'*See also* Policy of Insurance No 47 (2)' †	

Notes—Although a receipt for rent for an agricultural holding is exempt from payment of stamp under clause (c) a receipt for payment out of Court of money due under a decree for such a rent is not so exempt A W N, 1908, 272=5 A L J 747 Receipts granted by Presidents of District Boards for amounts transferred from Province to Local Funds, by adjustment in the Collector's books of account are exempt from stamp duty as being receipts for payment of money without consideration within the meaning of Art 53 exemption (b) 9 Ind Cas 342 (F B)=9 M L T 355; see also 46 A 354=22 A L J 288

54 RECONVEYANCE OF MORTGAGED PROPERTY—	
(a) if the consideration for which the property was mortgaged does not exceed Rs 1,000	The same duty as a Conveyance (No 23)‡ for the amount of such consideration as set forth in the Reconveyance
(b) in any other case	Ten rupees
	Assam, Bengal, C P, Madras Punjab and U P—Fifteen rupees
In Burma read — Reconveyance of mortgaged property or instrument of extinguishment of a mortgage	Subject to a maximum of two rupees eight annas the same duty as a Conveyance (No 23) for the amount of the consideration for the mortgage
55 RELEASE that is to say, any instrument '(not being such a release as is provided for by section 23A')§ whereby a person renounces a claim upon another person or against any specified property—	

* Substituted by Act 10 of 1927
† This note is added to Art 53 of Act V of 1906, s 7 (4)
‡ In Bombay read Bond for Conveyance
§ These parenthesied words are inserted by Act XV of 1904 s 8 (7)

(a) if the amount or value of the claim does not exceed Rs 1,000	The same duty as a Bond (No 15) for such amount or value as set forth in the Release Madras and Punjab—The same duty as a Bottomry Bond (No 16) for such amount or value as set forth in the Release
(b) in any other case ..	Five rupees Assam Bombay, Burma, Madras, Punjab C P and U P—Seven rupees and eight annas Bengal and Bombay—Ten rupees

Notes—A deed evidencing relinquishment of his claim by the reversioner is a release and must be stamped accordingly 11 Bom L R 735=33 B 657=3 Ind Cas 772 Where a document was executed by a certified purchaser of property sold in execution of a decree, renouncing all claims he may have or be supposed to have in respect of the property in favour of the person, who, it was alleged, was the true purchaser, it was a release under this article 24 A 372=A W N 1902 71 (F B) A document which is styled as a release but under which the executant not only relinquishes his rights over certain of his property but received a specific sum of money for the bargain is a conveyance and is chargeable as such under art 23 32 B 509=10 Bom L R 730 Where two persons do not claim property as co-owners of each other, but in order to avoid litigation agree to give up each in favour of the other certain property which he or she claims to be his or her particular property in full, the instrument is a release 13 A L J 1109

56 RESPONDENTIA BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination	The same duty as a bond (No 15) for the amount of the loan secured Assam, Bengal, Madras and Punjab—The same duty as a Bottomry Bond (No 16) for the amount of the loan secured
REVOCATION OF ANY TRUST OR SETTLEMENT—*See* Settlement (No 58), Trust (No 64)	
57 SECURITY BOND OR MORTGAGE DEED executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract—	
(a) when the amount secured does not exceed Rs 1 000,	The same duty as a Bond (No 15) for the amount secured Madras—The same duty as a Bottomry Bond (No 16) for the amount secured
(b) in any other case	Five rupees Assam, Burma C. P, Madras Punjab and U P—Seven rupees and eight annas Bengal and Bombay—Ten rupees
Exemptions Bond or other instrument when executed— (a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876,* section 99, for the due performance of the duties under that Act,	

* Ben Act III of 1876

(*b*) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem ;

(*c*) under No 3A of the rules made by the Governor of Bombay in Council under section 70 [illegible]

(*d*) [illegible] their sureties, as security for the repayment of such advances ;

(*e*) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof

Notes —A document which is an a agreement of service and a security bond, but in which no limit is fixed falls under Art 57 (*c*) and (*d*) , 1924 Nag 408.

58 SETTLEMENT— A —INSTRUMENT of (including a deed of dower)	The same duty as a Bond (No 15) for a sum equal to the amount or value of the property settled as set forth in such settlement . Assam, Bengal, Madras, Punjab—Tha same duty as a Bottomry Bond (No 16) for a sum equal to the amount or value of the property settled as set forth in such settlement Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement, in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas, §
Exemptions (*a*) Deed of dower executed on the occasion of a marriage between Muhammandans ; (*b*) Hludassa, that is to say, any settlement of immovable property executed by a Buddhist in Burma for a religious purpose, in which no value has been specified and on which a duty of Rs 10 has been paid	
B—REVOCATION OF ..	The same duty as a Bond (No 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument of Revocation but not exceeding ten rupees

* Bom. Act VII of 1879.

† Act XIX of 1883

‡ Act XII of 1884

§ Assam, Madras Punjab, U P.—read twelve annas for eight annas, and in Bengal and Bombay read one rupee

See also TRUST No (64)	U P —The same duty as a Bond (No 15) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation, but not exceeding fifteen rupees Assam, Bengal, Madras and Punjab—The same duty as a Bottomry Bond (No 16) for a sum equal to the amount or value of the property concerned as set forth in the instrument of revocation, but not exceeding fifteen rupees

Notes—A deed of settlement remains a deed of settlement within the meaning of this article, although it records by way of declaration or otherwise the terms of a disposition not made in writing at a date anterior to the passing of Act XV of 1904 7 Bom L R 931

59 SHARE WARRANTS to bearer issued under the Companies Act 1882 *	"one and a half times' † the duty payable on a Conveyance (No 23) for a consideration equal to the nominal amount of the shares specified in the warrant U P —The same duty as a debenture transferrable by delivery (No 27b) for a face amount equal to the nominal amount of the shares specified in the warrant
Exemptions Share warrant when issued by a Company in pursuance of the Indian Companies Act, 1882,* section 30, to have effect only upon payment as composition for that duty, to the Collector of Stamp revenue, of — (*a*) "one and a half † per centum of the whole subscribed capital of the company, or (*b*) if any company which has paid the said duty or composition in full subsequently issues an addition to its subscribed capital—"one and a half † per centum of the additional capital so issued	
SCRIP—*See* CERTIFICATE (No 19)	
60 SHIPPING ORDER for or relating to the conveyance of goods on board of any vessel	one anna
61 SURRENDER OF LEASE—	
(*a*) when the duty with which the lease is chargeable does not exceed five rupees ,	The duty with which such lease is chargeable
(*b*) in any other case	Five rupees Assam Bengal, Burma, Madras Punjab and U P—Seven rupees and eight annas
Exemption Surrender of lease, when such lease is exempted from duty	

* Act VI of 1882
† Substituted for the words "three quarters" by Act VI of 1910

62 TRANSFER Whether with or without consideration,—	
(a) of shares in an incorporated Company or other body corporate ;	'one half'* of the duty payable on a CONVEYANCE (No. 23) for a consideration equal to the value of the share
(b) of debentures, being marketable securities whether the debenture is liable to duty or not, except debentures provided for by section 8 ,	"one half"* of the duty payable on a Converance No 23) for a consideration equal to the face amount of the debenture
(c) of any interest secured by a Bond, Mortgage-deed, or Policy of Insurance—	
(i) if the duty on such Bond, Mortgage-deed, or policy does not exceed five rupees ;	The duty with which such bond, mortgage-deed or policy of Insurance is chargeable
(ii) in any other case	Five rupees Assam, Burma, Madras, Punjab, U P—Seven rupees eight annas Bengal and Bombay—Ten rupees
(d) of any property under Administrator-General's Act, 1874,† section 31,	Ten rupees Assam, Bengal Burma, Madras, Punjab and U P.—Fifteen Rupees
(e) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary	Five rupees or such smaller amount as may be chargeable under (a) to (c) of this article Assam, Bengal, Burma, Madras Punjab and U P—Seven rupees eight annas or such smaller amount as may be chargeable under clauses (a) to (c) of this article.

Exemptions.

Transfers by endorsement—
(a) of a bill of exchange, cheque or promissory note
(b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods ;
(c) of a policy of insurance ,
(d) of securities of the Government of India [or the Local Government]‡

See also section 8

In U P the duties prescribed by clauses (a) and (b) have been modified as follows .—

	Rs	A	P
Where the value of the share or the face amount of the debenture does not exceed Rs 100 ...	0	12	0
,, where exceeds Rs 100 but does not exceed Rs 200	1	8	0
,, ,, ,, 200 ,, ,, 300	2	4	0
,, ,, ,, 300 ,, ,, 400	3	0	0
,, ,, ,, 400 ,, ,, 500	3	12	0
,, ,, ,, 500 ,, ,, 600	4	8	0
,, ,, ,, 600 ,, ,, 700	5	4	0
,, ,, ,, 700 ,, ,, 800	6	0	0
,, ,, ,, 800 ,, ,, 900	6	12	0
,, ,, ,, 900 ,, ,, 1,000	7	8	0
and for every Rs 500 or part thereof in excess of Rs 1,000 . .	3	12	0

* Substituted for "one quarter" by Act VI of 1910
† Act II of 1874
‡ The words within brackets have been added by U. P Act V of 1923

63 TRANSFER OF LEASE by way of assignment and not by way of under lease	The same duty as conveyance (No 23) for a Consideration equal to the amount of the con sideration for the transfer
Exemptions	
Transfer of any lease exempt from duty	
64 TRUST—	
A —DECLARATION OF—of or concerning any property, when made by any writing not *being a Will*	The same duty as a Bond (No 15) for a sum equal to the amount or value of the property con cerned as set forth in the ins trument, but not exceeding fifteen rupees U P —*The same duty as a* Bond (No 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding Rs 22 8 0 Assam, Bengal, Madras, Punjab— The same duty as a Bottomry Bond (No 16) for a sum equal to the amount or value of the property concerned as set forth *in the instrument but not* exceed ing Rs 22 8 0
B —REVOCATION OF—of or concerning any property when made by any instrument other than a Will	The same duty as a Bond (No 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding ten rupees Assam Bengal, Madras and Punjab—The same duty as a Bottomry Bond (No 16), for a sum equal to the amount or value *of the property concerned* as set forth in the instrument but not exceeding rupees fifteen U P —The same duty as a Bond (No 15) for a sum equal to the amount or value of the pro *perty concerned as set forth* in the instrument but not exceeding rupees fifteen
See also SETTLEMENT (No 58)	
VALUATION—*See* APPRAISEMENT (No 8)	
VAKIL—*See* Entry as a Vakil (No 30)	
65 WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, ware house or wharf such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Four annas [Assam, Madras, Punjab and U P —Six annas] Bengal, Bombay and Burma— Eight annas

SCHEDULE II [Repealed by Act X of 1914]

THE ASSAM STAMP (AMENDMENT) ACT, 1922.

ASSAM ACT NO III OF 1922

PUBLISHED IN THE ASSAM GAZETTE ON THE 3RD MAY, 1922

An Act to amend the Indian Stamp Act 1899, in its application to Assam.

Preamble

WHEREAS it is expedient to increase the revenues of Assam and for that purpose to amend the Indian Stamp Act, 1899, in its application to Assam in the manner hereinafter appearing;

And WHEREAS the previous sanction of the Governor General has been obtained, under section 80A, sub section (3) of the Government of India Act, to the passing of this Act,

It is hereby enacted as follows —

Short title, extent and commencement

1 (1) This Act may be called the Assam Stamp (Amendment) Act, 1922,

(2) It extends to the whole of Assam

(3) It shall come into force on the first day of May 1922, and shall remain in force for a period of six years

Application of Act

2 The Indian Stamp Act, 1899 hereinafter referred to as the said Act, shall, in its application to Assam be amended in the manner hereinafter provided

Amendment of clause 10 of section 2 of Act II of 1899

3 To Clause (10) of section 2 of the said Act the following shall be added, namely —

"Or by schedule IA*, as the case may be

Amendment of section 3

4 In section (3) of the said Act —

(1) after clause (c) the following shall be inserted, namely —

Provided that, except as otherwise expressly provided in this Act and notwithstanding anything contained in clause (*a*), (*b*) or (*c*) of this section or in Schedule I, the amount indicated in Schedule I A to this Act shall subject to the exemptions contained in that schedule be the duty chargeable under this Act on the following instruments mentioned in clauses (*aa*) and (*bb*) of this proviso, as the proper duty thereof respectively —

(*aa*) every instrument mentioned in Schedule IA, as chargeable with duty under that schedule, which not having been previously executed by any person, is executed in Assam on or after the 1st day of May, 1922, and

(*bb*) every instrument mentioned in Schedule IA as chargeable with duty under that schedule, which not having been previously executed by any person is executed out of Assam on or after the first day of May, 1922, and relates to any property situated, or to any matter or thing done or to be done in Assam and is received in Assam

(2) after the word "provided" the word "also" shall be inserted

Amendment of section 4(1)

5 In sub section (1) of section 4 of the said Act, –

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* All the amendments made in the Schedule IA have been incorporated in Schedule I *supra* The amendments were in force only upto 30th April, 1928

† Substituted by Assam Act 2 of 1925

(*a*) after the words and figures "in Schedule I" the following shall be inserted, namely —

"or in Schedule I A as the case may be ,"

(*b*) for the words and brackets "instead of the duty (if any) prescribed for it in that schedule" the following shall be substituted, namely

"if the principal instrument be chargeable with the duty prescribed in Schedule I, or with a duty of one rupee eight annas, if the principal instrument be chargeable with the duty prescribed in Schedule IA instead of the duty (if any) prescribed for such other instrument in Schedule I or Schedule IA, as the case may be"

Amendment of section 6

6. In section 6 of the said Act —

(1) in the first paragraph, after the words and figures "in Schedule I" the following shall be inserted, namely —

' or in Schedule IA, as the case may be "—

(2) In the proviso, after the words "one rupee" the words "eight annas' shall be inserted, and after the words 'has been paid' the following shall be added, namely —

"unless it falls within the provisions of section

New section 6A

7 After section 6 of the said Act the following shall be added namely —

Payment of Assam stamp-duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument

6A (1) Notwithstanding anything contained in section 4 or 6 or in any other law, unless it is proved that the duty chargeable under the Assam Stamp (Amendment) Act, 1922, has been paid—

(*a*) on the principal or original instrument as the case may be, or

(*b*) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a cc
ment shall, if the principal or orig
Assam have been chargeable under
with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19A

(2) Notwithstanding anything contained in any law, no instrument, counterpart duplicate or copy chargeable with duty under this section shall be received *in evidence as properly stamped unless the duty chargeable under this section* has been paid thereon

Provided that a Court before which any such instrument, counterpart, duplicate, or copy is produced may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence

New section 19A

8 After section 19 of the said Act the following shall be inserted, namely —

Payment of duty on certain *instruments liable to increase* duty in Assam under clause (*bb*) of section 3

19A Where any instrument has become chargeable in any part of British India other than Assam with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in Assam under clause (*bb*) of the first proviso to section 3—

(*i*) notwithstanding anything contained in the first proviso to section 3, the amount of duty chargeable on such instrument shall be the

amount chargeable on it under Schedule IA less the amount of duty, if any, already paid on it in British India,

(ii) in addition to the stamps if any, already affixed thereto, such instrument shall be stamped with the stamps, necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for first time at the time when it became chargeable with higherduty

New section 29A

9 After section 29 of the said Act the following shall be inserted, namely —

Application of sections 23A, 24 and 29 to instrument chargeable with duty under schedule IA

29A In applying sections 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the Assam Stamp (Amendment) Act, 1922, the references in those sections to the several articles in Schedule I shall be deemed to be references to the corresponding articles in Schedule IA "

Amendment of section 32

10 In section 32 of the said Act—

(1) In clause(a) of the proviso, after the words "any instrument" the words 'other than an instrument chargeable with a duty under clause (bb) of the first proviso to section 3 shall be inserted,

(2) the word "or" at the end of clause (b) of the proviso shall be omitted,

(3) after clause (c)of the proviso the following shall be inserted, namely — "or (d) any instrument chargeable with duty under clause (bb) of the first proviso to section 3 and brought to him after the expiration of three months from the date on which it is first received in Assam"

New section 48 A

11 After section 48 of the said Act the following shall be inserted namely —

Validity of certificate or endorsement in respect of instruments for which higher rate of duty payable in Assam

"48A Notwithstanding anything contained in this Act, no certificate or endorsement under this Act in respect of any instrument chargeable in Assam with a higher rate of duty under the Assam Stamp (Amendment) Act 1922, shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty unless the duty chargeable under the Assam Stamp (Amendment) Act, 1922, has been paid on such instrument"

Amendment of section 77

12 At the beginning of section 77 of the said Act the following shall be inserted, namely —

"Except for the provisions as to copies contained in section 6A'

New schedule 1 A

13 After Schedule I to the said Act the following shall be inserted,—

SCHEDULE IA*

Notes—Although this Act is no longer in force still for facility of reference all the amendments are given

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* All the amendments given in the Schedule IA have been incorporated in Schedule I, *supra*

(*a*) after the words and figures "in Schedule I" *the following shall be* inserted, namely —

"or in Schedule I A as the case may be,

(*b*) for the words and brackets "instead of the duty (if any) prescribed for it in that schedule" the following shall be substituted, namely

"if the principal instrument be chargeable with the duty prescribed in Schedule I, or with a duty of one rupee eight annas if the principal instrument be chargeable with the duty prescribed in Schedule IA instead of the duty (*if any*) *prescribed for such other instrument in Schedule I* or Schedule *IA*, *as* the case may be"

Amendment of section 6

6 In section 6 of the said Act —

(1) in the first paragraph, after the words and figures "in Schedule I" the following shall be inserted, namely —

"or in Schedule IA, as the case may be"—

(2) *In the proviso, after the words* "one rupee" the words "*eight annas*" shall be inserted, and after the words "has been paid" the following shall be added, namely —

"unless it falls within the provisions of section

New section 6A

7 After section 6 of the said Act the following shall be added namely —

Payment of Assam stamp duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument

6A (1) Notwithstanding anything contained in section 4 or 6 or in any other law, unless it is proved that the duty chargeable under the Assam Stamp (Amendment) Act, 1922 has been paid—

(*a*) on the principal or original instrument as the case may be or

(*b*) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall if the principal or original instrument would when received in Assam have been chargeable under the Assam Stamp (Amendment) Act 1922 with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19A

(2` [illegible] y law, no instrument counterpart [illegible] this section shall be received in ev[illegible] chargeable under this section has been paid thereon

Provided that a Court before which any such instrument, counterpart duplicate or copy is produced may, in its discretion permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence

New section 19A

8 After section 19 of the said Act the following shall be inserted, namely —

Payment of duty on certain instruments liable to increase duty in Assam under clause (*bb*) of section 3

19A Where any instrument has become chargeable in any part of British India other than Assam with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in Assam under clause (*bb*) of the first proviso to section 3—

(*i*) notwithstanding anything contained in the first proviso to section 3, the amount of duty chargeable on such instrument shall be the

(*b*) for the words and brackets "instead of the duty (if any) prescribed for it in that Schedule" the following shall be substituted, namely :—

"if the principal instrument be chargeable with the duty prescribed in Schedule I, or with a duty of one rupee eight annas, if the principal instrument [illegible] escribed in Schedule IA, instead of the duty [illegible] instrument in Schedule I or Schedule IA, as

Amendment of section 6

6 In section 6 of the said Act,—

(1) in the first paragraph, after the words and figures, "in Schedule I" the following shall be inserted, namely —

"or in the Schedule IA, as the case may be ,"

(2) in the proviso, after the words "one rupee" the words "eight annas' shall be inserted, and after the words 'has been paid' the following shall be added, namely —

"unless it falls within the provisions of section 6A "

New section 6A

Payment of Bengal Stamp duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument

7 After section 6 of the said Act the following shall be inserted, namely —

"6A (1) Notwithstanding anything contained in section 4 or 6 or in any other law, unless it is proved that the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, has been paid—

(*a*) on the principal or original instrument as the case may be, or

(*b*) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would when received [illegible] lment) Act, [illegible] principal or [illegible] strument, counter [illegible] shall be received [illegible] nder this section

Provided that a Court before which any such instrument, counterpart, duplicate, or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence

New section 19 A

Payment of duty on certain instruments liable to increase duty in Bengal under clause (*bb*) of section 3

8. After section 19 of the said Act the following shall be inserted, namely —

"19A Where any instrument has become chargeable in any part of British India other than Bengal with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in Bengal under clause (*bb*) of the first proviso to section 3—

(*i*) notwithstanding anything contained in the first proviso to section 3, the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule IA less the amount of duty, if any, already paid on it in British India

[illegible] affixed thereto, such instru- [illegible] the payment of the amount [illegible] me manner and at the same time and by the same persons as though such instrument were an instrumer

received in British India for the first time at the time when it became chargeable with the higher duty

New section 29A

9 After section 29 of the said Act the [illegible] namely —

"29A [illegible] instrument chargeable [illegible] ity under the Bengal Stamp (Amendment) Act, 1922, the references in those sections to the several articles in Schedule I shall be deemed to be references to the corresponding articles in Schedule IA

Application of sections 23A, 24 and 29 to instrument chargeable with duty under Schedule IA

Amendment of section 32

10 In section 32 of this Act—

(1) in clause (*a*) of the proviso, after the words "any instrument the words "other than an instrument chargeable with a duty under clause (*bb*) of the first proviso to section 3" shall be inserted ,

(2) the word "or" at the end of clause (*b*) of the proviso shall be omitted ,

(3) *after clause (c) of the proviso the following shall be inserted, namely*—

"or

"(*d*) any instrument chargeable with duty under clause (*bb*) of the first proviso to section 3 and brought to him after the expiration of three months from the date on which it is first received in Bengal "

New section 48A

11 After section 48 of the said Act the following shall be inserted, namely —

'48A Notwithstanding anything contained in this Act, no certificate or endorsement under this Act in respect of an instrument chargeable in Bengal with a higher rate of duty under the Bengal Stamp (Amendment) Act, 1922, shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty unless the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, has been paid on such instrument "

Validity of certificate or endorsement in respect of instruments for which higher rate of duty payable in Bengal

Amendment of section 77

12 At the beginning of section 77 of the said Act the following shall be inserted, namely —

"except for the provisions as to copies contained in section 6A "

New Schedule IA

13 After Schedule I to the said Act the *following shall be inserted, namely* :—

SCHEDULE IA *

THE INDIAN STAMP (BENGAL AMENDMENT) ACT, 1935

BENGAL ACT NO XII OF 1935

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 16th MAY, 1935]

An Act further to amend the Indian Stamp Act, 1899

WHEREAS [illegible] e revenues of Bengal and for that [illegible] Act, 1899,† in its application to [illegible] g,

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* Amendments given in the Schedule I A have been incorporated in Schedule I, *Supra*

† Act II of 1899

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act* to the passing of this Act ;

It is hereby enacted as follows —

Short title, extent, commencement and duration

1. (1) This Act may be called the Indian Stamp (Bengal Amendment) Act, 1935.

(2) It extends to the whole of Bengal

(3) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint

(4) Sections 3, 4, 6 and 7 [except clause (1) thereof] shall remain in force for three years only and thereafter the Indian Stamp Act, 1899, shall have force as if it had not been amended by the said sections

Application of Act

2 The Indian Stamp Act, 1899, hereinafter referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided

Amendment of section 4 of Act II of 1899

3 In sub section (1) of section 4 of the said Act, for the words "one rupee eight annas" the words "two rupees" shall be substituted

Amendment of section 6

4 In the proviso to section 6 of the said Act, for the words "one rupee eight annas" the words "two rupees" shall be substituted

Amendment of sections 6A, 29A, 48A and the heading of Schedule IA

5 In sections 6A, 29A 48A and the heading of Schedule IA of the said Act, after the figures "1922" wherever they occur, the words brackets and figures "or the Indian Stamp (Bengal Amendment) Act, 1935" shall be inserted

Amendment of section 28

6 In the proviso to sub-section (4) of section 28 of the said Act, for the words ' one rupee" the words "two rupees" shall be substituted

Amendment of Schedule IA

7 In Schedule IA of the said Act, the

(1) in Article No 2, Indian Succession Act, 1873, section 78 of the I

section 10 of the Succession Certificate Act, 1889" in the first column, the words and figures "under section 6 of the Government Saving Banks Act, 1873,† or section 291 or section 375 or section 376 of the Indian Succession Act, 1925"‡ shall be substituted ;

[other items have been duly entered in the original Schedule]

BOMBAY ACT NO. II OF 1932

FIRST PUBLISHED, AFTER HAVING RECEIVED THE ASSENT OF THE GOVERNER GENERAL IN THE "BOMBAY GOVERNMENT GAZETTE" ON THE 30TH MARCH, 1932

An act to provide for the levy of a duty on consumption of electrical energy for the purpose of lights and fans in the Presidency of Bombay and to amend the Court fees Act, 1870, and the Indian Stamp Act, 1879, in their application to the said Presidency.

Preamble

WHEREAS it is expedient to provide for the levy of a duty on consumption of electrical energy for the purpose of lights and fans in the Presidency of Bombay and to amend

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* 5 & 6 Geo V, c. 61, 6 & 7 Geo V c 37 9 & 10 Geo V, c. 101.

† V of 1873

‡ XXXIX of 1925

the Court fees Act, 1870 and the Indian Stamp Act, 1899, in their application to the said Presidency for the purposes hereinafter appearing, and whereas the previous sanction of the Governor-General required by sub section (3) of section 80A of the Government of India Act and the previous sanction of the Governor required by section 80 C of the said Act have been obtained for the passing of this Act, It is hereby enacted as follows —

Part I—Preliminary

Short title

1 This Act may be called the Bombay Finance Act 1932

Extent commencement and duration

2. (1) Except where it is otherwise provided in this Act this Act extends to the whole of the Presidency of Bombay

(2) It shall come into force on the 1st day of April, 1932

(3) This section and sections 3 to 15 containing Parts II, III and IV shall remain in operation for one year from the date on which this Act comes into force

Part IV—Stamp duties

Amendment of II of 1899

15 In the Indian Stamp Act 1899, in its application to the Presidency of Bombay the following amendments shall be made namely —

Amendment of sections 4 and 6 of II of 1899

(1) In sub section (1) of section 4, and in the proviso to section 6 for the words "one rupee the words 'two rupees shall be substituted

Amendment of sections 11, 32 35, 40, 41 69 and 74 of II of 1899

(2) In clause (*a*) of section 11, proviso (*c*) to section 32 proviso (*a*) to section 35 sub section (1) of section 40 section 41, clause (*b*) of section 69 and the proviso to section 74 before the words 'one anna' the words 'two annas shall be inserted

New section 19A of II of 1899

(3) After section 19, the following section shall be inserted, namely —

Payment of duty on certain instruments liable to increased duty in Bombay Presidency

'19A Where any instrument of the nature described in any article in Schedule I and relating to any property situate or to any matter or *thing done or to be done in the Presidency* of Bombay is executed out of the said Presidency and subsequently received in the said Presidency—

(*a*) the amount of duty
of duty chargeable under
executed in the Presidency
paid on such instrument in

(*b*) and in addition to the stamps if any already affixed thereto such instrument shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a) of this section, in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it

section (3)
rument exe
itish India
provisions

Amendment of section 28 of II of 1899

4 For the proviso to sub section (28) the following shall be substituted, namely .—

"Provided that notwithstanding anything contained in article 23 of Schedule I, the duty on such last mentioned conveyance shall in no case be less than two rupees"

Amendment of Schedule I of II of 1899

5 In Schedule I –

(*a*) in column 1 of article 12 clauses (a) and
(*b*) shall be repealed ,
(*c*) [illegible] Schedule relating to articles 2 [illegible] (b), 26 (b), 29, 30 (b), 39, [illegible] 7 (b), 62 (c) (ii) and 65 and [illegible] e entries shown in column 3 of the latter Schedule shall be substituted ,

(*cc*) for articles 5 and 43, the following shall respectively, be substituted, namely :—

[*N B*—Already shown in articles 5 and 43 of the main Act]

(*d*) for Articles 7 and 10 the following shall, respectively, be substituted, namely —

[*N. B*—*Already shown in articles 7 and 10 of the main Act*]

(*e*) in clause (e) in column (1) of article 25 for the words "one rupee" the words "two rupees" shall be substituted , and

(*f*) in proviso (a) and (c) in column 2 of Article 45, for the words "eight annas" the words "one rupee" shall be substituted

SCHEDULE

[*See Section 15 (5)*]

[All the amendments have been incorporated in the main Schedule]

Part V—Stamp duties on certain instruments in certain cities.

Extent of part V

16 This part extends to the cities of Bombay, Ahmedabad, Poona and Karachi only

Definitions

17 In this Part, unless there is anything repugnant in the subject or context,

(*a*) 'City of Ahmedabad' means the municipal district of Ahmedabad, the cantonment of Ahmedabad, and the notified areas of Kankaria Asarva, Ellis Bridge and Sabarmati

(*b*) 'City of Poona means the municipal district of Poona, the suburban municipal district of Poona, and the cantonment of Poona, and

(*c*) 'City of Karachi' means the municipal district of Karachi, the cantonments of Karachi and Manora and the limits of the Karachi Port Trust

Amendment of Schedule I to II of 1899

18 Notwithstanding anything contained in Part IV, in Schedule 1 to the Indian Stamp Act, 1899, in its application to the cities of Bombay, Ahmedabad, Poona, and Karachi, for the entries in columns 1 and 2 relating to Articles 23, 58 and 63, the following entries shall, repectively, be substituted, namely —

23 Conveyance [as defined by section 2 (10)] not being a Transfer charged or exempted under No 62—

For the City of Bombay

	Rs	as	p
Where the amount or value of the consideration for such conveyance as set forth therein exceeds Rs 200 but does not exceed Rs 300	8	8	0
where it exceeds Rs 300 but does not exceed Rs 400	12	0	0
where it exceeds Rs 400 but does not exceed Rs 500	15	8	0
where it exceeds Rs 500 but does not exceed Rs 600	19	0	0
where it exceeds Rs 600 but does not exceed Rs 700	22	8	0
where it exceeds Rs 700 but does not exceed Rs 800	26	0	0
where it exceeds Rs 800 but does not exceed Rs 900	29	8	0
where it exceeds Rs 900 but does not exceed Rs 1 000	33	0	0
and for every Rs 500 or part thereof in excess of Rs 1,000 . .	17	8	0

For the Cities of Ahmedabad, Poona and Karachi

	Rs	as	p
Where the amount or value of the consideration for such conveyance as set forth therein exceeds Rs 200 but does not exceed Rs 300	6	8	0
exceeds Rs 300 but does net exceed Rs 400	9	0	0
exceeds Rs 400 but does not exceed Rs 500	11	8	0
exceeds Rs 500 but does not exceed Rs 600	14	0	0
exceeds Rs 600 but does not exceed Rs 700	16	8	0
exceeds Rs 700 but does not exceed Rs 800	19	0	0
exceeds Rs 800 but does not exceed Rs 900	21	8	0
exceeds Rs 900 but does not exceed Rs 1 000	24	0	0
and for every Rs 500 or part thereof in excess of Rs 1 000	1[illegible]	8	0

56 Settlement A—Instrument of (including a deed of dower)	The same duty as a Conveyance (No (23) for a consideration equal to the amount or value of the property settled as set forth in such settlement Provided that where an agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas
Exemptions	
(*a*) Deed of dower executed on the occasion of a marrige between Muhammadans	
(*b*) Hludassa, that is to say any settlement of immovable property executed by a Buddhist in Burma for a religious purpose in which no value has been specified and on which a duty of Rs 10 has been paid	
B—Revocation of— See also Trust (No 64)	The same duty as a Conveyance (No 23 for a consideration equal to the amount or value of the property concerned as set forth in the instrument of revocation but not exceeding ten rupees
63 Transfer of lease by way of assignment and not by way of under lease	The same duty as a Conveyance (No 23) for a consideration equal to the amount of the consideration for the transfer
Exemption	
Transfer of any lease exempt from duty	

Repeal of Bom Act II of 1926

19 The Indian Stamp (Bombay Amendment) Act 1926, is hereby repealed

BURMA ACT NO II OF 1932

PASSED BY THE BURMA LEGISLATIVE COUNCIL

(Received the assent of His Excellency the Governor on the 9th March, 1932, and of His Excellency the Governor General on the 25th March, 1932, and published in the "Burma Gazette" of the 2nd April, 1932)

An Act further to amend the Indian Stamp Act, 1899

Preamble.

WHEREAS it is necessary to make an addition to the public revenues of Burma and for that purpose to revise the scale of stamp-duty provided by the Indian Stamp Act

1899, in its application to Burma ; And whereas the previous sanction of the Governor General required by sub section 3 of section 80 A of the Government of India Act has been obtained to the passing of this Act , It is hereby enacted as follows —

Short title, extent, commencement and duration

1 (1) This Act may be called the Indian Stamp (Burma Amendment) Act, 1932

(2) It extends to the whole of Burma

(3) It shall come into force on such date as the Local Government may, by notification, appoint in this behalf

(4) It shall remain in force up to 31st of March, 1935

Application of the Act

2. The Indian Stamp Act, 1899, shall be amended in its application to Burma in the manner hereinafter provided

Interpretation clause

3 In this Act, unless a contrary intention appears, all references to sections and schedules shall be deemed to relate to the sections and schedules of the Indian Stamp Act, 1899.

Insertion of new section 6A

4 After section 6, the following shall be inserted as section 6A, namely :—

Payment of Burma Stamp duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument

"6A (1) Notwithstanding anything contained in section 4 or section 6 or in any other law, unless it is proved that the duty chargeable in Burma has been paid—

(*a*) on the principal or original instrument, as the case may be, or

(*b*) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement, other than a principal instrument, or on a counterpart, duplicate or copy of any instrument, shall, if the principal or original instrument, would, when received in Burma, have been chargeable with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19A

(2) N [illegible]

counterpart, duplicate or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence "

Insertion of new sub section 19A

5 After section 19, the following new section shall be inserted, namely .—

Payment of duty on certain instruments executed outside Burma and subsequently received in Burma

"19A Where any instrument of the nature described in any article in schedule I and relating to any property situate or to any matter or thing done or to be done in Burma is executed outside Burma and subsequently received in Burma—

(a) the amount of duty chargeable on such instrument shall be the amount of duty chargeable under schedule I on a document of the like description executed in Burma less the amount of duty, if any, already paid on it in British India, and

(b) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a), in the same manner and at the same time

and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty "

Insertion of new section 48A

6 After section 48 the following new section shall be inserted, namely —

Validity of certificate or endorsement in respect of instruments, for which higher rate of duty payable in Burma

"48A Notwithstanding anything contained in this Act, no certificate or endorsement under this Act in respect of an instrument chargeable in Burma with a higher rate of duty shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty unless the higher rate of duty chargeable in Burma has been paid on such instrument "

Substitution of new schedule for schedule

7 For Schedule I, the following shall be substituted, namely —

SCHEDULE

[*N B*—All the amendments made in Schedule I has been incorporated in the Schedule of the main Act]

THE CENTRAL PROVINCES (STAMP) AMENDMENT ACT 1923

ACT NO II OF 1923

PUBLISHED IN THE CENTRAL PROVINCES GAZETTE OF THE 3RD FEBRUARY, 1923

An Act to amend the Indian Stamp Act 1899, in its application to the Central Provinces

[illegible] amend the Indian Stamp Act, 1899,* in

[illegible] of the Governor General required by [illegible]) of section 80A of the Government of India Act † has been obtained to the passing of this Act, It is hereby enacted as follows —

Short title

1 (1) This Act may be called the Indian Stamp (Central Provinces Amendment) Act, 1923

Extent

(2) It extends to the whole of the Central Provinces

Commencement and duration

(3) It shall come into force on such date as the Local Government may by notification, direct and shall remain in force up to the 31st day of March 1926

N B—Although the Act has expired the amendments are given for facility of reference

New section 19 A of Stamp Act

2 After section 19 of the Indian Stamp Act, 1899* (hereinafter called the said Act) the following new section shall be inserted, namely —

Payment of duty on certain instruments liable to increased duty in Central Provinces

19A. Where any instrument of the nature described in any article in Schedule I and relating to any property situate or to any matter or thing done or to be done in the Central Provinces is executed out of the said province and subsequently received in the said province—

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* II of 1899 † 5 & 6 Geo V, c 61

(*a*) the amount of duty chargeable on such instrument shall be the amount of duty chargeable under Schedule I on a document of the like description executed in the Central Provinces less the amount of duty, if any, already paid on it in British India,

(*b*) and in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (*a*) of this section, in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it becomes chargeable with the higher duty, and

(*c*) the provisions contained in clause (*b*) of the proviso to sub section (3) of section 32 shall apply to such instrument as if it were an instrument executed or first executed out of British India and first received in British India when it became chargeable to the higher duty aforesaid but the provisions contained in clause (*a*) of the said proviso shall not apply thereto "

Amendment of Schedule I of Stamp Act

3 In Schedule I to the said Act—

(*a*) for the entries in column 2 of the said Schedule relating to articles 2 (*b*), 3, 4, 5, 8 (*b*), 10, 15, 18 (*a*) 18 (*b*), 23, 24, 39, 48 (*a*), 48 (*c*), 48 (*d*), 48 (*e*), 48 (g), 54 (*b*), 55 (*b*) and 57 (*b*) and shown in column 2 of the Schedule to this Act, the entries shown in column 3 of the latter Schedule shall be substituted , and

(*b*) for article 12, the following shall be substituted, namely —

12 Award, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing partition on a reference made otherwise than by an order of the Court in the course of a suit—	
Where the amount or value of the property to which the award relates as set forth in such award, does not exceed Rs 1,000, and in any other case	The same duty as a Bond No (15) for such amount or value Seven rupees eight annas
Exemption Award under the Bombay District Municipal Act, 1901 section 160, or the Bombay Hereditary Offices Act 1874, section 18	

SCHEDULE *

MADRAS ACT NO. VI OF 1922.

RECEIVED THE ASSENT OF THE GOVERNOR ON THE 30TH MARCH, 1922 AND THAT OF THE GOVERNOR GENERAL ON THE 18TH APRIL, 1922

An Act to amend the Indian Stamp Act, 1899, in its application to the Presidency of Madras

Preamble

WHEREAS it is expedient to amend the Indian Stamp Act, 1899, in its application to the Presidency of Madras ,

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub section (3), of the Government of India Act to the passing of the Act , It is hereby enacted as follows —

* All the amendments of Schedule I (A) have been inserted in Schedule I

Short title and extent

1 (1) This Act may be called the Madras Stamp (Amendment) Act 1922

(2) It extends to the whole of the Presidency of Madras

Interpretation clause

2 In this Act the words "the principal Act" shall mean the Indian Stamp Act, 1899

Amendment of clause 10 of section 2 of Act II of 1899

3 To clause (10) of section (2) of the principal Act the following shall be added, namely — "or by schedule IA* as the case may be'

Amendment of section 3

4 In section 3 of the principal Act,—

(1) after clause (c) the following shall be inserted, namely —

"Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in clause (a) or (c) of this section or in schedule I, the amount indicated in schedule IA shall, subject to the exceptions contained in that schedule, be the duty chargeable on the following instruments—

(aa) every instrument mentioned in Schedule IA as chargeable with duty under that Schedule which not having been previously executed by any person is executed in the Presidency of Madras on or after the 1st day of April 1922

(*bb*) every instrument mentioned in Schedule IA as chargeable with duty under that schedule, which, not having been previously executed by any person is executed out of the Presidency of Madras on or after the first day of April 1922, and relates to any property situated or to any matter or thing done or to be done in the said Presidency and is received in the said Presidency"

(2) after the words ' Provided' the word "also" shall be inserted

Amendment of s 4

5 In sub section (1) of section 4 of the principal Act —

(*a*) after the words and figure "in Schedule I' the words, figure and letter "or in schedule IA, as the case may be" shall be inserted,

(*b*) after the words "one rupee' the words, "or one rupee eight annas shall be inserted,

(*c*) for the words 'in that Schedule I' the words, figures and letter 'in Schedule I or in Schedule IA as the case may be" shall be substituted

Amendment of s 6

6 In section 6 of the principal Act after the word and figure 'Schedule I the words figure and letter "or in Schedule IA as the case may be" and after the words "one rupee' the words "or one rupee eight annas as the case may be' shall be inserted

Addition of a new section 19A

7 After section 19 the following shall be inserted, namely —

Payment of duty on certain instruments liable to increased duty under clause (*bb*) of section (3)

19A Where any instrument has become chargeable in any part of British India other than the Presidency of Madras with duty under the stamp law in force in that part of British India and thereafter becomes chargeable with a higher rate of duty in the said Presidency under clause (*bb*) of the first proviso to section 3—

(1) Notwithstanding anything contained in the first proviso to section 3, the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule IA less the amount of duty, if any, already paid on it in British India,

* All the amendments of Schedule 1 (A) have been inserted in Schedule I,

(*ii*) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (1) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty, and

(*iii*) the provisions contained in clause (*b*) or clause (*c*) as the case may be, of the proviso to sub section (3) of section 32 shall, with the necessary modifications, apply to such instrument, but the provisions contained in clause (*a*) of the said proviso shall not apply thereto

Amendment of section 23A

8 In sub-section (1) of section 23A after the word and figure "Schedule I" the words, figures and letters "or article No 4 (*c*) of Schedule IA as the case may be" shall be inserted

Amendment of section 24

9. In section 24 after the word and figure "Schedule I" the words, figures and letter "or Articles 16 of Schedule IA as the case may be" shall be inserted

Amendment of section 29

10 In clause (*a*) of section 29 after the word and figure "Schedule I" the words, figure and letter "or the corresponding articles of Schedule IA as the case may be" shall be inserted

Amendment of section 32

11 In clause (*c*) of the proviso to sub section (3) of section 32, after the words "half an anna" the following shall be inserted, namely —

"Or a mortgage of crop [Article 34 (*a*) of Schedule IA] chargeable under clause (*aa*) or (*bb*) of section 3 with a duty of two annas"

Amendments of sections 35 40 and 41

12 In clause (*a*) of the proviso to section 35, in sub section (1) of section 40 and in section 41, after the words, "half an anna only," the following shall be inserted, namely —

"or a mortgage of crop [Article 34 (*a*) of Schedule IA] chargeable under clause (*aa*) or (*bb*) of section 3 with a duty of two annas"

Addition of a new Schedule IA

13 After Schedule I of the principal Act the following shall be inserted, namely,—

SCHEDULE IA *

THE PUNJAB ACT NO VIII OF 1922.

[RECEIVED THE ASSENT OF HIS EXCELLENCY THE GOVERNOR OF THE PUNJAB IN COUNCIL ON THE 24TH NOVEMBER, 1922 AND THAT OF HIS EXCELLENCY THE VICEROY AND GOVERNOR GENERAL ON THE 13TH DECEMBER, 1922, AND WAS FIRST PUBLISHED IN THE PUNJAB GOVERNMENT GAZETTE OF THE 22ND DECEMBER, 1922]

An Act to provide for amendment of the Indian Stamp Act, 1899, in its application to the Punjab

Preamble

WHEREAS it is expedient to increase the revenues of the Punjab and for that purpose to amend the Indian Stamp Act, 1899, in its application to the Punjab, in the manner hereinafter appearing,

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* All the amendments have been incorporated in Schedule I, *supra*

And whereas the previous sanction of the Governor General under sub-section (3) of section 80A, of the Governornment of India Act, has been obtained ; It is hereby enacted as follows :—

Short title, extent and commencement

1 (1) This Act may be called the Indian Stamp (Punjab Amendment) Act, 1922.

(2) It extends to the Punjab

(3) It shall come into force on such date as the Local Government may, by notification, appoint in this behalf.

Application of Act

2 The Indian Stamp Act, 1899, shall in its application to the Punjab, be amended in the manner hereinafter provided

Meaning of sections

3 The section hereinafter referred to by number mean the section so numbered in the Indian Stamp Act, 1899, unless it shall appear to the contrary.

Amendment of section 2

4 In clause (10) of section 2 for the colon shall be substituted a comma, followed by the words or by Schedule IA as the case may be

Amendment of section 3

5 In section 3—

(1) After clause (c) the following proviso shall be inserted, namely :—

"Provided that notwithstanding anything contained in clauses (a), (b) or (c) of this section or in Schedule I and subject to the exemptions contained in Schedule IA, the following instruments shall be chargeable with duty of the amount indicated in Schedule IA, as the proper duty therefor, respectively that is to say—

(aa) every instrument mentioned in Schedule IA, as chargeable with duty under that schedule, which, not having been previously executed by any person is executed in the Punjab on or after the date of commencement of this Act :

(bb) every instrument mentioned in Schedule IA as chargeable with duty under that Schedule, which, not having been previously executed by any person, is executed out of the Punjab on or after the date of the commencement of this Act and relates to any property situated or to any matter or thing done or to be done in the Punjab, and is received in the Punjab"

(2) Between the word "Provided" and the words "that no duty" the word "also" shall be inserted

Amendment of section 4

6 In sub section (1) of section 4—

(a) for the figure I after the words "in Schedule" shall be substituted the figure and letter 'I A,"

(b) between the word 'rupee" and the word "instead" shall be inserted the words "and eight annas"

Amendment of section 6

7 In section 6—

(between the word "description" and the word "in" shall be inserted the word "given" and after the word and figure "Schedule" shall be inserted the words figure and letter "and Schedule I A',

(2) in the proviso, after the words "one rupee" the words "and eight annas" shall be inserted, and after the words "has been paid" the following shall be added, namely —'unless it falls within the provisions of section 6A"

New section

8 After section 6 the following new section shall be inserted, namely :—

Payment of the Punjab Stamp duty on copies counterparts or duplicates when the duty has not been paid on the principal or original instrument

"6 A, (1) Notwithstanding anything contained in section 4 or 6 or in any other law, unless it is proved that the duty chargeable under the Indian Stamp (Punjab Amendment) Act, 1922, has been paid—

(*a*) on the principal or original instrument as the case may be, or

(*b*) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would when received in the [illegible] the Indian Stamp (Punjab Amendment) [illegible] be the duty with which the principal or [illegible] chargeable under section 19 A,

(2) [illegible] in section 35 or in any other law, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon

Provided that a Court before which any such instrument, counterpart, duplicate or copy is produced, shall permit the duty chargeable under the section to be paid thereon, and shall then receive it in evidence"

Amendment of section 9

9 In clause (*a*) of section 9 between the words 'chargeable' and the word "and' shall be inserted the following proviso, namely —

Provided that with respect to instruments which are chargeable with duty under Schedule IA, such reduction or remission may, by notification, be granted by the Governor in Council

New section

10 After section 19 the following new section shall be inserted namely —

Payment of duty on certain instruments liable to increased duty in the Punjab under clause (bb) of section 3

'19 A Where any instrument has become chargeable in any part of British India other than the Punjab with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in the Punjab under clause (bb) of the first proviso to section 3 as amended by the Indian Stamp (Punjab Amendment) Act 1922—

(*i*) notwithstanding anything contained in the said proviso the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule IA less the amount of duty, if any, already paid on it in British India,

(*ii*) in addition to the stamps if any, already affixed thereto such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same person as though such instrument were an instrument received in British India for the first time at the time when it became chargeable with the higher duty"

Amendment of section 23 A

11 In sub-section (1) of section 23 A the letter "A" shall be added after the figure 'I'

Amendment of section 24

12. In the proviso to section 24 for the full stop shall be substituted a comma followed by the words, figure and letter "or Schedule I A as the case may be"

Amendment of section 29

13 In clause (a) of section 29 the letter "A' shall be inserted between figure 'I" and the word 'namely'

Amendment of section 32

14. In section 32—

(1) in clause (a) of the proviso after words "any instrument" the words "other than an instrument chargeable with a duty under clause (bb) of the first proviso to section 3 as amended by the Indian Stamp (Punjab Amendment) Act, 1922" shall be inserted

(2) the word "or" at the end of clause (b) of the proviso shall be omitted,

(3) after clause (c) of the proviso the word "or" shall be added followed by a new clause (d) as follows —

"(d) any instrument chargeable with duty under clause (bb) of the first proviso to section 3 as amended by the Indian Stamp (Punjab Amendment) Act 1922, and brought to him after the expiration of three months from the date on which it is first received in the Punjab"

Amendment of section 77

15. At the beginning of section 77 the following words shall be inserted, namely —

"Except for the provisions as to copies contained in section 6 A"

New Schedule

16. After Schedule I the new Schedule IA hereinafter annexed shall be deemed to have been added

Substitution of entries in Schedule I A for entries in Schedule I

17 Wherever the words "as in Schedule I" appear in Schedule IA opposite the name of any instrument, the duty payable on such instrument shall be as specified in Schedule I, and wherever the entries in the second column of Schedule I A differ from the corresponding entries in Schedule I, the duty payable shall be the amount specified as payable in Schedule IA instead of the amount so specified in Schedule I

SCHEDULE IA*

THE UNITED PROVINCES ACT NO. IV OF 1932

RECEIVED THE ASSENT OF THE GOVERNOR OF THE UNITED PROVINCES OF AGRA AND OUDH ON THE 14TH APRIL, 1932 AND OF THE GOVERNOR GENERAL ON THE 24TH APRIL, 1932 AND WAS PUBLISHED UNDER SECTION 81 OF THE GOVERNMENT OF INDIA ACT ON THE 7TH MAY, 1932

An Act to Amend the Indian Stamp Act, 1897, in its application to the United Provinces

Preamble

Whereas it is expedient to increase the revenues of the United Provinces and for that purpose to amend the Indian Stamp Act, 1899, in its application to the United Provinces, in the manner hereinafter appearing,

And whereas the previous sanction of the Governor General has been obtained under section 80A, sub section (3) of the Government of India Act, to the passing of this Act, It is hereby enacted as follows —

Short title, extent and commencement

1 (1) This Act may be called the United Provinces Stamp (Amendment) Act, 1932

(2) It extends to the whole of the United Provinces

(3) It shall come into force on the 1st day of May, 1932, and shall remain in force uptill March 31, 1936.

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* All amendments have been incorporated in Schedule I

Application of Act II of 1899.

2. The Indian Stamp Act, 1899, hereinafter referred to as the said Act, shall in its application to the United Provinces, be amended in the manner hereinafter provided

Amendment of clause (10) of section 2 of Act II of 1899

3 To clause (10) of section 2 of the said Act the following shall be added, namely —

"or by Schedule IA, as the case may be"

Amendment of section 3

4 In section 3 of the said Act—

(1) after clause (c) the following shall be inserted, namely —

"Provided that, except as otherwise expressly provided in this Act, and not withstanding anything contained in clauses (a), (b) or (c) of this section or in Schedule I, the amount indicated in Schedule IA to this Act shall, subject to the exemptions contained in that Schedule, be the duty chargeable under this Act, on the following instruments, mentioned in clauses (aa) and (bb) of this proviso as the proper duty therefor respectively,

(aa) every instrument mentioned in Schedule IA as chargeable with duty under that Schedule, which not having been previously executed by any person, is executed in the United Provinces on or after the first day of May, 1932, and

(bb) every instrument mentioned in Schedule IA as chargeable with duty under that schedule which, not having been previously executed by any person, is executed out of the United Provinces on or after the first day of May, [illegible] atter or thing done or to [illegible] United Provinces ;

[illegible] all be inserted,

Amendment of section 4

5. In sub-section (1) of section 4 of the said Act—

(a) after the words and figure "in Schedule I" the following shall be inserted, namely —

"or in Schedule IA, as the case may be,"

(b) for the words and brackets "instead of the duty (if any) prescribed for it in that schedule" the following shall be substituted, namely —

"if the principal instrument be chargeable with duty prescribed in Schedule I, or with a duty of one rupee eight annas, if the principal instrument be chargeable with the duty prescribed in Schedule IA, instead of the duty (if any) prescribed for such other instrument in Schedule I or Schedule IA, as the case may be"

Amendment of section 6

6 In section 6 of the said Act—

(1) in the first paragraph after the words and figure "in Schedule I" the following shall be inserted, namely .—

"or in Schedule IA, as the case may be,"

(2) in the proviso, after the words "one rupee" the words "eight annas" shall be inserted, and after the words "has been paid" the following shall be added, namely :—

"unless it falls within the provisions of section 6A"

New section 6A

7 After section 6 of the said Act, the following shall be inserted, namely .—

Payment of the United Provinces stamp duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument

"6A (1) Notwithstanding anything contained in section 4 or 6 or in any other law, unless it is proved that the duty chargeable under the United Provinces Stamp (Amendment) Act, 1932, has been paid—

(*a*) on the principal or original instrument as the case may be, or
(*b*) in accordance with provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart duplicate or copy of any instrument shall, if the principal or original instrument would when received in the United Provinces have been chargeable under the United Provinces Stamp (*Amendment*) *Act* 1932, *with a higher* rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19A

...ied in any law, no *instrument*, ... duty under this section *shall be* ...less the duty chargeable under this section has been paid thereon

Provided that a Court before which any such instrument, counterpart duplicate or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence'

New *section 19A*

8 After section 19 of the said Act the following shall be inserted, namely —

Payment of duty on certain instruments liable to increased duty in the United Provinces under clause (*bb*) of section 3

"19A Where any instrument has become chargeable in any part of British India other than the United Provinces with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in the United Provinces under clause (bb) of the first proviso to section 3—

... contained in the first proviso to section 3 ... such instrument shall be the amount charge... less the amount of duty, if any, already paid on ...

...ips, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (1) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it becomes chargeable with the higher duty'

New section 29A

9 After section 29 of the said Act the following shall be inserted, namely —

Application of sections 23A, 24 and 29 to instruments chargeable with duty under *Schedule IA*.

"29A In applying section 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the United Provinces Stamp (Amendment) Act, 1932, the references in those sections to the *several articles in Schedule* I shall be deemed to be references to corresponding articles in Schedule IA

Amendment of section 32

10 In section 32 of the said Act—

(1) In clause (*a*) of the proviso after the words 'any instrument' the words "other than an instrument chargeable with a duty under clause (*bb*) of the first proviso to section 3 shall be inserted,

(2) the word "or" at the end of clause (*b*) of the proviso shall be omitted,

(3) after clause (*c*) of the proviso the following shall be inserted namely —

'(*d*) any instrument chargeable with duty under clause (*bb*) of the first proviso to section 3, and brought to him after the expiration of three months from the date on which it is first received in the United Provinces'

New section 48A

11. After section 48 of the said Act the following shall be inserted, namely :—

Validity of certificate or endorsement in respect of instrument for which higher rate of duty is payable in the United Provinces

"48A. Notwithstanding anything contained in this Act no certificate or endorsement under this Act, in respect of an instrument chargeable in the United Provinces with a higher rate of duty under the United Provinces Stamp (Amendment) Act, 1932, shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty unless the duty chargeable under the United Provinces Stamp (Amendment) Act, 1932, has been paid on such instrument"

Amendment of section 77

12 At the beginning of section 77 of the said Act the following shall be inserted namely,—

"Except for the provisions as to copies contained in section 3A"

New Schedule IA

13 After Schedule I to the Act the following shall be inserted, namely —

*SCHEDULE IA

THE

INDIAN (SPECIFIED INSTRUMENTS) STAMP ACT, 1924

ACT NO. XIII OF 1924

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 13TH JUNE, 1924

An Act to provide for the modification of certain provisions of the Indian Stamp Act, 1899, in their application to certain promissory notes and other instruments

Short title and extent

1 (1) This Act may be called the Indian (Specified Instruments) Stamp Act, 1924

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

Definitions

2 In this Act —

(a) 'instrument to which this Act applies means—

(i) any instrument mentioned in Article No 29, No 36, No 37 or No 52 in Schedule I to the Indian Stamp Act, 1899,† or

(ii) any promissory note payable on demand for an amount exceeding two hundred and fifty rupees which has been executed in British India at any time after the 30th day of September, 1923, and before the 1st day of April, 1924, and which has been stamped in such a manner that it would have been duly stamped for the purposes of the Indian Stamp Act 1899,† if the Indian Stamp (Amendment) Act, 1923, ‡ had not been passed, and

(b) 'section" means a section of the Indian Stamp Act, 1899 †

* Incorporated in the Schedule to Act II of 1899
† Act II of 1899
‡ Act XIII of 1923

(a) on the principal or original instrument as the case may be, or
(b) in accordance with provisions of this section,
the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart duplicate or copy of any instrument shall, if the principal or original instrument would when received in the United Provinces, have been chargeable under the United Provinces Stamp (Amendment) Act, 1932, with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19A

(2) Notwithstanding anything contained in any law, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon.

Provided that a Court before which any such instrument, counterpart duplicate or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence

New section 19A

8 After section 19 of the said Act the following shall be inserted, namely —

Payment of duty on certain instruments liable to increased duty in the United Provinces under clause (bb) of section 3

"19A Where any instrument has become chargeable in any part of British India other than the United Provinces with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in the United Provinces under clause (bb) of the first proviso to section 3—

(i) notwithstanding anything contained in the first proviso to section 3 the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule IA less the amount of duty, if any, already paid on it in British India

(ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it becomes chargeable with the higher duty"

New section 29A

9 After section 29 of the said Act the following shall be inserted, namely —

Application of sections 23A 24 and 29 to instruments chargeable with duty under Schedule IA.

"29A In applying section 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the *United Provinces Stamp (Amendment) Act*, 1932, the references in those sections to the several articles in Schedule I shall be deemed to be references to corresponding articles in Schedule IA

Amendment of section 32

10 In section 32 of the said Act—

(1) In clause (a) of the proviso after the words "any instrument" the words "other than an instrument chargeable with a duty under clause (bb) of the first proviso to section 3 shall be inserted,

(2) the word "or" at the end of clause (b) of the proviso shall be omitted,

(3) after clause (c) of the proviso the following shall be inserted namely —

"(d) any instrument chargeable with duty under clause (bb) of the first proviso to section 3, and brought to him after the expiration of three months from the date on which it is first received in the United Provinces"

PART V

INTESTATE SUCCESSION

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Preliminary

CHAPTER II.

Rules in cases of Intestates other than Parsis

Distribution where there are lineal descendants

Distribution where there are no lineal descendants

CHAPTER III

Special Rules for Parsi Intestates

PART VI

TESTAMENTARY SUCCESSION

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Of Wills and Codicils

CHAPTER III

Of the Execution of unprivileged Wills

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Of Bequests of things described in General Terms

CHAPTER XIX

Of Bequests of the Interest or Produce of a Fund

CHAPTER XX

Of Bequests of Annuities

CHAPTER XXI

Of Legacies to Creditors and Portioners

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Of Election

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Of Gifts in Contemplation of Death

PART VII

PROTECTION OF PROPERTY OF DECEASED

COMPARATIVE TABLES.

Showing Distribution in the New Act of the Section of Acts Repealed

A

The Succession Property Protection Act (XIX of 1841)

Sections of Act XIX of 1841	Sections of the New Acts
1	192 (1)
2	192 (2)
3	193
4	194
5	195
6	197
7	198
8	199
9	200
10	201
11	202
12	203
13	204
14	205
15	206
16	207
17	208
18	209
19	210

B

The Indian Succession Act (X of 1865)

Sections of Act X of 1865	Sections of the New Act	Sections of Act X of 1865	Sections of the New Act
1	1	24	28
2	29, 58 (2), 217	25	30
3	2	26	32
4	20	27	33
5	5	28	34
6	6	29	36
7	7	30	37
8	8	31	38
9	9	32	39
10	10	33	40
11	11	34	41
12	12	35	42
13	13	36	43
14	14	37	44
15	15	38	45
16	16	39	46
17	17	40	47
18	18	41	48
19	19	42	49
20	24	43	35
21	25	44	21
22	26	45	22
23	27	46	59

The Indian Succession Act (X of 1865)—*contd.*

Sections of Act X of 1865.	Sections of the New Act.	Sections of Act X of 1865.	Sections of the New Act.
47	60	104	117
48	61	105	118
49	62	106	119
50	63	107	120
51	64	108	121
52	65	109	122
53	66	110	123
54	67	111	124
55	68	112	125
56	69	113	126
57	70	114	127
58	71	115	128
59	72	116	129
60	73	117	130
61	74	118	131
62	75	119	132
63	76	120	133
64	77	121	134
65	78	122	135
66	79	123	136
67	80	124	137
68	81	125	138
69	82	126	139
70	83	127	140
71	84	128	141
72	85	129	142
73	86	130	143
74	87	131	144
75	88	132	145
76	89	133	146
77	90	134	147
78	91	135	148
79	92	136	149
80	93	137	150
81	94	138	151
82	95	139	152
83	96	140	153
84	97	141	154
85	98	142	155
86	99	143	156
87	100	144	157
88	101	145	158
89	102	146	159
90	103	147	160
91	104	148	161
92	105	149	162
93	106	150	163
94	107	151	164
95	108	152	165
96	109	153	166
97	110	154	167
98	111	155	168
99	112	156	169
100	113	157	170
101	114	158	171
102	115	159	721
103	116	160	173

The Indian Succession Act (X of 1865)—*contd*

Sections of Act X of 1865	Sections of the New Act	Sections of Act X of 1865	Sections of the New Act
161	174	216	245
162	175	217	246
163	176	218	247
164	177	219	248
165	178	220	249
166	179	221	250
167	180	222	251
168	181	223	252
169	182	224	253
170	183	225	254
171	184	226	255
172	185	227	256
	186	228	257
173	187	229	258
174	188(1)	230	259
175	188(2)	231	260
176	189	232	261
177	190	233	262
178	191	234	263
179	211	235	264
180	228	235A	265
181	222(1)	236	266
182	222(2)	237	267
183	223	238	268
184	224	239	269
185	225	240	270
186	226	241	271
187	213	241A	272
188	227	242	273
189	236	242A	274
190	212	243	275
191	220	244	276
192	221	245	277
193	229	246	278
194	230	246A	279
195	231	247	280
196	232	248	281
197	233	249	282
198	234	250	283
199	235	251	284
200	219	252	284(4)Sch V
201	219(*a*)	253	285
202	219(*b*)	254	289Sch VI
203	219(*c*)	255	290
204	219(*d*)	256	291
205	219(*e*)	257	292
206	219(*f*)	258	293
207	219(*g*)	259	294
208	237	260	216
209	238	261	295
210	239	262	297
211	240	263	299
212	241	264	300
213	242	264A	301
214	243	264B	302
215	244	265	303

The Indian Succession Act (X of 1865)—*contd*

Sections of Act X of 1865	Sections of the New Act	Sections of Act X of 1865	Sections of the New Act
266	304	299	339
267	305	300	340
268	306	301	341
269	307	302	342
269A	308	303	343
269B	309	304	344
270	310	305	345
271	311	306	346
272	312	307	347
273	313	308	348
274	314	309	349
275	315	310	350
276	316	311	351
277	317	312	352
277A	318	313	353
278	319	314	354
279	320	315	355
280	321	316	356
281	322	317	357
282	323	318	358
283	324 (1)	319	359
284	324 (2)	320	360
285	325	321	361
286	326	322	362
287	327	323	363
288	328	324	364
289	329	325	365
290	330	326	366
291	331	326A	367
292	332	327	368
293	333	328	369
294	334	331	4, 20, 22, 23 22, 58, 212, 213
295	335	332	3
296	336	333	296
297	337		
298	338		

C

The Parsi Intestate Succession Act (XXI of 1865)

Sections of Act XXI of 1865	Sections of the New Act
1	50
2	51
3	52
4	53
5	54
6	55
7	56
8	29 (2), 31
First Schedule	Schedule II, Part I
Second Schedule	Schedule II, Part II

D

The Hindu Wills Act (XXI of 1870)

Sections of Act XXI of 1870	Sections of the New Act
2	57, 213 (2), Schedule III
3	57 Sch III
6	Sch III

E

The Probate and Administration Act (V of 1881)

Sections of Act V of 1881	Sections of the New Act	Sections of Act V of 1881	Sections of the New Act
2	217 264, 300	45	258
3	2	46	259
4	211	47	260
5	228	48	261
6	222 (1)	49	262
7	222 (2)	50	263
8	223	51	264
9	224	52	265
10	225	53	266
11	226	54	267
12	227	55	268
13	236	56	270
14	220	57	271
15	221	58	272
16	229	59	273
17	230	60	274
1	231	61	275
19	232	62	276
20	233	63	277
21	234	64	278
22	235	65	279
23	236	66	280
24	237	67	281
25	238	68	282
26	239	69	283
27	240	70	284
28	241	71	284 (4)
29	242	72	285
30	243	73	286
31	244	74	287
32	245	75	288
33	246	76	289
34	247	77	290
35	248	78	291
36	249	79	292
37	250	80	293
38	251	81	294
39	252	82	216
40	253	83	295
41	254	84	297
42	255	85	298
43	256	86	299
44	257	87	300

The Probate and Administration Act (V of 1881)—*contd*

Sections of Act V of 1881	Sections of the New Act	Sections of Act V of 1881	Sections of the New Act
87A	301	119	339
87B	302	120	340
88	305	121	341
89	306	122	342
90	307	123	343
90(A)	308	124	344
90(B)	309	125	346
91	310	126	347
92	311	127	348
93	312	128	349
94	313	129	350
95	314	130	351
96	315	131	352
97	316	132	353
98	317	133	354
99	318	134	355
100	319	135	356
101	320	136	357
102	321	137	358
103	322	138	359
104	323	139	360
105	325	140	361
106	326	141	362
107	327	142	363
108	328	143	364
109	329	144	365
110	330	145	366
111	331	145A	367
112	332	146	368
113	333	147	369
114	334	149	391
115	335	150	217
116	336	152	215
117	337	154	57
118	338	157	296

F

The Succession Certificate Act (VII of 1889)

Sections of Act VII of 1889	Sections of the New Act	Sections of Act VII of 1889	Sections of the New Act
1	370(1)	16	381
3	370(2)	17	382
4	214	18	383
5	371	19	384
6	372	20	385
7	373	21	215
8	374	22	386
9	375	24	197
10	376	25	387
11	377	26	388
12	378	27	389
14	379	28	390
15	380		

G

The District Delegates Act (VI of 1881)

Sections of Act VI of 1881	Sections of the New Act
1	265
2	272
3	276 (2) (*b*)
4	278 (2)
5	284
6	285
7	286, 287, 288
8	289 290, 348
9	248, (1) (e), 283, 280, 290

THE INDIAN SUCCESSION ACT, 1925

ACT NO. XXXIX OF 1925.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 30TH SEPTEMBER, 1925.

An Act to consolidate the law applicable to intestate and testamentary succession in British India.

...ble to intestate and ... ed as follows :— ... Indian Law relating to succession The separate existence on the statute book of a number of large and important enactments renders the persent law difficult of ascertainment and there is, therefore, every justification for an attempt to consolidate it The Bill has been prepared by the Statute Law Revision Committee as a purely consolidating measure No intentional change of the law has therefore been made '—*Statement of Objects and Reasons* "Many of the opinions elicited on circulation of the Bill involved amendments of the existing law ... Bill which has been referred to u... of those who have submitted ... not be advisible or within our cc...

PART 1

PRELIMINARY

Short title

1 [Suc S 1] This Act may be called the Indian Succession Act, 1925

Definitions

2 [Suc S 2] In this Act, unless there is *anything* repugnant in the subject or context —

(*a*) "administrator' means a person appointed by competent authority to administer the estate of a dece...

(*b*) "codicil" means an i... explaining, altering or adding to ... part of the Will.

provisions which are derived from that Act The term 'exempted person is a drafting device which enables the language of the Bill to be shortened.—*Notes on Clauses*

Notification —Notification under section 332 of Act X of 1865 at the appellate stage of a case did not apply where there had been already a decision of a competent Court 20 C W N 1082=1 Pat L J 225=36 Ind Cas 206

PART II

OF DOMICILE

Application of Part

4 [Suc S 331] This part shall not apply if the deceased *was a* Hindu Muhammadan Buddhist, Sikh or Jaina

Notes —It is well settled that the word 'Hindu' in section 331 of the Indian Succession Act, 1865 and in section 2 of the Probate and Administration Act, 1881 includes *Jainas* and *Sikhs* (cf 31 C 11, etc,) and as the Hindu Wills Act 1870 which the Bill consolidates makes special mention of Sikhs and Jainas they are separately mentioned throughout the Bill This and other similar sections may need to be qualified if and when the Special Marriage (Amendment) Bill which has just been passed by the Indian Legislature, becomes law—*Notes on Clauses*

Law regulating succession to deceased person's immovable and movable property respectively

5 [Suc S 5] (1) Succession to the immovable property in British India of a person deceased *shall* be regulated by the law of British India wherever *such person* may have had his domicile at the time of his death

(2) Succession to the movable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death

Illustrations

(i) A, having his domicile in British India, dies in France, leaving movable property in France, movable property in England, and property both movable and immovable, in British India The succession to the whole is regulated by the law of British India

[illegible] domicile in France dies in British India and [illegible] movable in British India The success on [illegible] the rules which govern, in France and the [illegible] an Englishman dying domiciled in France [illegible] roperty is regulated by the law of British India

[illegible] ve and leave right un[illegible] was passed 6 C 791–8 [illegible] intestacy [illegible]

One domicile only affects succession to movables

6 [Suc S 6] A person can have only one domicile for *the* purpose of the succession to his movable property

Notes —This section is based upon the leading case of *Sommerville* v *Lord Sommerville* 5 Ves 750 *Mr Jacob* says that the decided cases clearly establish the principle that for whatever purposes a person might have more than one domicile, he can have but one for the purposes of succession *White* v *Brown* 1 Wallace Jr

(U S Cir Court), *Gilman* v *Gilman*, 25 Maine, 165 A person may have one domicile for the purpose of testate or intestate succession and another domicile for all other purposes *Dicey's Conflict of Law*, 2nd Ed p 98

Domicile of origin of person of legitimate birth

7 [Suc S 7] The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled, or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death

Illustration

At the time of the birth of A, his father was domiciled in England A s domicile of origin is in England whatever may be the country in which he was born

Domicile of origin—Every person receives at birth a domicile known as ... 104, *Udney*, v *Udney* 1 H L Sc 451, *Little*... mate children acquire by birth the domicile ... y 341, *Carolina* v *Pinto* 41 B 687, 18 Bom ... is ...

domicile of origin adheres until another ... intention to remain *Story's Conflict of L*... is changed during infancy by a change of ... cannot be regarded as the infant's domic... Ch 180

Domicile of origin of illegitimate child

8 [Suc S 8] The domicile of origin of an illegitimate child is in the country in which, at the time of the birth, his mother was domiciled

Notes—No person should be without a domicile and to secure this end the law attributes to every individual as soon as he is born the domicile of his ... of his mother if the child is ... *Idney* 1 H L 451 (457), see ... v *Crispen* L R 1 P & D ... *Butterfield*, 37 Ch D 357

Continuance of domicile of origin

9 [Suc S 9] The domicile of origin prevails until a new domicile has been acquired

a man s birth and connections' *Per Lord Alvanley* in *Sommerville* v *Sommerville* 5 Ves 750 (787), see also *Bell* v *Kennedy*, L R 1 H L So 307; *Dalhousie* v *M' Donell* 1 Cl & F 817

Acquisition of new domicile

10 [Suc S 10] A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin

Explanation—A man is not to be *deemed to* have taken up his fixed habitation in British India merely by reason of his residing there in *His* Majesty s civil "military", "naval"* or 'air force' † service, or in the exercise of any profession or calling

Illustrations

(*i*) A, whose domicile of origin is in England, proceeds to British India where he settles as a barrister or a merchant intending to reside there during the remainder of his life His domicile is now in British India

* Inserted by Act 35 of 1934 † Substituted by Act X of 1927

goes to Austria and enters the Austrian
A has acquired a domicile in Austria
France comes to reside in British India
Government of India for a certain number of years
end of that period He does not acquire

goes to reside in British India for the
tnership which has been dissolved and
with the intention of returning to England as soon as that purpose is accomplished He does not by such residence acquire a domicile in British India, however long the residence may last

British India in the circumstances mentioned
wards alters his intention, and takes up his
has acquired a domicile in British India
French Settlement of Chandernagore, is com
many
fety
itish

the last prece
urred
it his
residence in Calcutta shall be permanent A has acqu India

Domicile—The domicile of a person is that place or country in which his habitation is fixed without any present intention of removing therefrom *Craignith* v *Hewett* (1892) 3 Ch 180 Domic *Whicker* v *Hume*, 7 H L Cas 124 (160) The rule leading case of *Sommerville* v *Sommerville*, 5 Ve n is to prevail, until the party has not only acquir and carried into execution an intention of abandon another as his sole domicile So the only question in ether there was any intention to reside in a particular place which is not his domicile of origin *De* Curt 863 *Stevens* v *Masson*, L R 17 Eq 78, *King* v in *Aikman* v *Aikman*, lomicile of origin must icile by actual residence also 41 B 687

11. [Suc S 11] Any person may acquire a domicile in British India by making and depositing in some office in British India, appointed in this behalf by the Local Government, a declaration in writing such domicile · provided that he *has* year immediately preceding the time of

Special mode of acquiring domicile in British India

for the purpose of showing intention in as much choice as well as of origin must be effected H L 7=3 Macq 852) and one year's resi ion in British India

12. [Suc S 12] A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment, nor does any other person acquire such domicile by reason only of residing with *such first mentioned person* as part of his family or as a servant

Domicile not acquired by residence as representative of foreign Government or as part of his family

Notes—The principal upon which the immunity rests is what is commonly called the fiction of extra territoriality The residence of a *foreign minister* within the jurisdiction of the State to which he is accredited is by this fiction to which the sovereign of the State assents by receiving him considered as a continuing

residence in his own country, and this fictitious situation is applied not only to the person of the minister, but to his family and suite, secretaries of legation and other secretaries, servants, movable effects and the house in which he resides —*Foote's International Jurisprudence*, p 167

Continuannce of new domicile

13 [**Suc S 13**] A new domicile continues until the former domicile has been resumed or another has been acquired.

Notes —A domicile once acquired remains until a new one is acquired elsewhere *facto et animo* *Story's Conflict of Law*, s 471 A new domicile can be abandoned either by acquiring another domicile or by mere latter case the domicile of origin revives But a doned unless and until a new one is acquired *Alvanley* in *Sommerville* v *Sommerville*, 5 Ves approval by *Sir C Cresswell* in *Crokenden* v *Fuller* domicile is to prevail until the party has not only ted and carried into execution an intention of abandoning his former domicile and taking another as his sole domicile" *Foote's International Law*, p 55

Minor's domicile

14. [**Suc S 14**] The domicile of a minor follows the domicile of the parent from whom he derives his domicile of origin

Exception —The domicile of a minor does not change with that of his parent if the minor is married or holds any office or employment in the service of His Majesty, or has set up, with the consent of the parent, in any distinct business.

Notes —A minor is generally incapable of changing his domicile during his minority During minority his domicile follows that of his father If the father dies during his minority the last domicile of the father is the domicile of the infant *Story's Conflict of Law*, § 46) If a man at the time he attains his majority is of unsound mind or remains in that state continuously up to the time of his death, the incapacity of minority never having been followed by adult capacity, will continue to confer upon the father the right of choice in the matter of domicile of his son and a change of domicile by the father will usually produce a similar change of domicile as regards his lunatic son *Williams on Executor*, p 1263 Mr Westlake points out that a married minor must be regarded as *sui juris* for the purposes of domicile since on his or her marriage a new home is founded— *Foote's P I Law*, 53

Domicile acquired by woman on marriage

15 [**Suc S 15**] By marriage a woman acquires the domicile of her husband, if she had not the same domicile before

Notes —Marriage means actual marriage not an unlawful marriage, or mere betrothal *Burge*, 35 cited *by Stokes*, p 2 But see *Turner* v *Thompson*, 13 P D

Wife's domicile during marriage

16 [**Suc S 16.**] A wife's domicile during her marriage follows the domicile of her husband

Exception —The wife's domicile no longer follows that of her husband if they are separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation

Notes —In certain cases, I without reference to intention be perhaps more correct to s presumption of intention, which mon example of this principle is the rule that a woman assumes on her marriage the domicile of her husband *Bremer* v *Freeman*, 10 Moo P. C 306

Minor's acquisition of new domicile

17 [**Suc S 17.**] *Save as herein before otherwise* provided in *this Part*, a person cannot during minority, acquire a new domicile

Notes—Legitimate children acquire by birth the domicile of their father *Forbes* v *Forbes*, Kay, 341 An infant cannot change his domicile *Ibid*

Lunatic's acquisition of new domicile

18 [Suc S 13] An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person

Notes—If a man of unsound mind attains majority his domicile will follow that of his father if he is legitimate and of his mother if he is illegitimate *Sharpe* v *Crisper*, L R 1 P & D 611, *Urquhart* v *Butterfield*, 47 Ch D 356 *But if he attains majority and then becomes insane it is clear* that his domicile will be what is was at the time when he become insane The only exception to this appears to be the case of a *feme coverte* because a wife cannot *acquire a domicile* separate and distinct from her husband *Dalhousie* v *Mc Donall*, 7 C & F 817

Succession to movable property in British India in absence of proof of domicile elsewhere

19 [Suc S 19] If a person dies leaving movable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India

Notes—*Under s 5 (2) the law of domicile of a deceased person governs the* succession to his personal estate wherever situated but the estate itself must be administered in the country in which possession is taken under lawful authority *Peston* v *Melville* 8 C & F I, *Thomson* v *Advocate General*, 12 C & F I, *Bruce* v *Bruce* 2 B & P 229 N, *Burns* v *Cole*, Amb 425, *S P Piper* v *Piper* Amb 16, *Sommerville* v *Sommerville* 5 Ves 750, *Re Trufort* 36 Ch D 600 *Doe* v *Vardill*, 5 B & C 451, *Dighton* v *Crispen*, I L R H L 30=35 L J Pro 129

Presumption of Indian Domicile—In the abs[illegible] the law will presume that the domicile [illegible] movable property if situate in India will [illegible] sumption mentioned in this section comes [illegible] deceased is unknown and the movable pro[illegible] also 12 Moo P C 255

PART III

MARRIAGE

20 [Suc S 4] (1) No person shall, by marriage acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried

Interests and powers not acquired nor lost by marriage

(2) This section—

(*a*) [Suc S 331] shall not apply to any marriage contracted before the first day of January, 1866,

[Mar Wom Pro S 2] shall not apply and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage the Hindu Mohammadan, Buddhist, Sikh or Jaina religion

Scope—This section and section 54 read together should be understood as laying down a general rule as to the immediate effect of marriage in respect of movable property belonging to each or either of married persons [illegible] nuptial settlement and not as la[illegible] sion 23 C 506 The law which [illegible] Succession Act was completely [illegible] This section does not apply in [illegible] an Indian domicile 1 C 4[illegible] have already been acquired before the passing of the Act 6 C 794

21. [Suc S 44] If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Effect of marriage between person domiciled and one not domiciled in British India

Notes —' In my opinion sections 4 (=s 20) and 44 (=s 21) read together should ... immediate effect of marriage in ... ier of the married persons not ... down a rule intended to affect ... 56 The preponderance of authority had been in favour of making the domicile of the husband, or at least that of the marriage govern the rights of the parties where the domiciles of the husband and wife are different 'The Succession Act where either of the parties had an Indian domicile very reasonably submits all their rights both as to movables and immovables to the territorial law of India, to that extent the *jus gentium*, or common law of nations has been set aside or modified From this point of view it is easy to see why ss 4 and 44 are kept apart The two sections deal with different subjects The former declares the general *lex loci* of India, the second lays down a special rule to govern a particular case " 1 C 412

22 [Suc S. 45] (1) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or, if the father is dead or absent from British India, with the approbation of the High Court

Settlement of minor's property in contemplation of marriage

[Suc S 331] (2) Nothing in this section or in section 21 shall apply to any Will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina

Scope of the section —Hitherto the general personal estate of a female infant was bound by a settlement made on her marriage, because such personal estate became by marriage the absolute property of the husband and the settlement was in effect his settlement and not hers (3 Daw Case 2nd Ed 728 N citing *Sir John Leach* in *Simpson* v *Jones* 2 Russ & My 376) Now by sections 20 and 21, this reason is no longer valid Hence this section was introduced as an enabling section (*Stokes*, 24)

PART IV

Of Consanguinity.

23 [Suc S 331 & P. S 8.] Nothing in this Part shall apply to any Will made or intestacy occurring before the first day of January, 1866, to or intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh, Jaina or Parsi

Application of Part

... the Indian Succes... not retrospective ... Will made before ... The purpose of ... law applicable to intestate and testamentary succession 31 B 25

24 [Suc. S 20.] Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor

Kindred or consanguinity.

Notes—Legitimate children acquire by birth the domicile of their father *Forbes* v *Forbes*, Kay 341 An infant cannot change his domicile *Ibid*

Lunatic's acquisition of new domicile

18 [Suc S 13] An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person

Notes—If a man of unsound mind attains majority his domicile will follow that of his father if he is legitimate and of his mother if he is illegimate *Sharpe* v *Crispen* L R 1 P & D 611, *Urquhart* v *Butterfield*, 47 Ch D 356 But if he attains majority and then becomes insane it is clear that his domicile will be what is was at the time when he become insane The only exception to this appears to be the case of a *feme coverte* because a wife cannot acquire a domicile separate and distinct from her husband. *Dalhousie* v *Mc Donall*, 7 C & F 817

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Presumption of Indian Domicile—In the absence of any domicile elsewhere the law will presume that the domicile is Indian and the succession to his movable property if situate in India will be regulated accordingly The presumption mentioned in this section comes into operation When the domicile of the deceased is unknown and the movable property is situate in British India See also 12 Moo P C 255

PART III

Marriage

Interests and powers not acquired nor lost by marriage

20 [Suc S 4] (1) No person shall, by marriage acquire any interest in the property of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried

(2) This section—

(a) [Suc S 331] shall not apply to any marriage contracted before the first day of January, 1866,

[Mar Wom Pro S 2] shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage the Hindu Mohammadan, Buddhist, Sikh or Jaina religion

Scope—This section and section 54 read together should be understood as laying down a general rule as to the immediate effect of marriage in respect of movable property belonging to each or either of married persons not comprised in an ant

21 [Suc S 44] If a person whose domicile is not in British India marries in British India a person whose domicile is in British India neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage

Effect of marriage between person domiciled and one not domiciled in British India

Notes—' In my opinion sections 4 (=s 20) and 44 (=s 21) read together should ... effect of marriage in ... married persons not ... rule intended to affect ... preponderance of ... the husband, or at least that of the marriage govern the rights of the parties where the domiciles of the husband and wife are different The Succession Act where either of the parties had an Indian domicile very reasonably submits all their rights both as to movables and immovables to the territorial law of India, to that extent the *jus gentium* or common law of nations has been set aside or modified From this point of view it is easy to see why ss 4 and 44 are kept apart The two sections deal with different subjects The former declares the general *lex loci* of India the second lays down a special rule to govern a particular case 1 C 412

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Settlement of minors property in contemplation of *marriage*

[Suc S 331] (2) Nothing in this section or in section 21 shall apply to any Will made or intestacy occurring before the first day of January, 1866 or to intestate or testamentary succession to the property of any Hindu, Muhammadan Buddhist, Sikh or Jaina

Scope of the section—Hitherto the general personal estate of a female infant was bound by a settlement made on her marriage, because such personal estate became by marriage the absolute property of the husband and the settlement was in effect his settlement and not hers (3 Daw Case 2nd Ed 728 N citing *Sir John Leach* in *Simpson* v *Jones* 2 Russ & My 376) Now by sections 20 and 21, this reason is no longer valid Hence this section was introduced as an enabling section (*Stokes* 24)

PART IV

Of Consanguinity

23 [Suc S 331 & P S 8] Nothing in this Part shall apply to any Will made or intestacy occurring before the first day of January, 1866, to or intestate or testamentary succession to the property of any Hindu, Muhammadan Buddhist, *Sikh Jaina* or Parsi

Application of Part

... the Indian Succes... not retrospective ... Will made before ... The purpose of ... law applicable to intestate and testamentary succession 31 B 25

24 [Suc S 20] Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor

Kindred or consanguinity

Notes—A gift to a next of kin under the English law does not include a husband or a wife *Watt* v *Watt*, 3 Ves 244, *Gurrick* v *Lord Camden*, 14 Ves 372, *In re Fitzgerald*, 58 L J Ch 662 But in the case of Hindus the term kindred includes relationship by marriage 15 C W N 945

Lineal consanguinity

25 [Suc S 21] (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a [illegible] d father, and so upwards in the [illegible] s son, grand son, great grand son [illegible]

[illegible] ither ascending or descending [illegible] ie first degree, and so likewise is his son, his grandfather and grandson in the second degree, his great grand father and great grand son in the third *degree, and so on.*

Lineal consanguinity—Lineal consanguinity is that which subsists between persons, of whom one is descended in a direct line from the other, as between the [illegible] upwards in the direc[illegible] son, great-grand son, [illegible] l consanguinity, it may [illegible] *onarum ab eodem stipite descendentium*, since relations are such as descend one from the other and both of course from the same common ancestor *Williams on Executors*, p 330

Collateral consanguinity

26 [Suc S 22] (1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other

(2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is *necessary* to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, a degree *being* allowed for each person, both ascending and descending.

Collateral consanguinity—'Collateral kindred answers to the same description: Collateral relatives agreeing with the lineal in this, that they descend from the same stock or ancestors, but differing in this that they do not descend one from the other Collateral kinsmen are such then, as literally spring from one and the same ancestor who is the *stirpes*, or root, and *stirpes*, trunk, or common stock, from which these relatives are branched out As if *John Stiles* has two sons who have each numerous issues, both these issues are lineally descended from *John Stiles* as their common ancestor and they are collateral kinsmen to each other, because they are all descended from the common ancestor, and all have a portion of his blood in their veins, which denominates them *consanguineous* *Wm Ex 331*

Persons held for purpose of succession to be similarly related to deceased

27. [Suc S 23] For the purpose of succession, there is no distinction—

(*a*) between those who are related to a person deceased through his father, and those who are related to him through his mother, or

(*b*) between those who are related *to a person deceased* by the full blood, and those who are related to him by the half blood, or

(*c*) between those who were actually born in the lifetime of a person *deceased* and those who at the date of his death were only conceived in the womb but who have been subsequently born alive

Clause (a)—Relations through father's side and relations through mother's side are equally entitled to inherit. *Blackborough* v *Davis*, (1701) 1 P Wms 50; *Moor* v *Burham*, (1723) 1 P Wms 53

[illegible] equally with collaterals of the whole [illegible] of the half blood of the intestate [illegible] s of the whole blood to share, with

their mother, after the death of the intestate's father, in the personal property of the intestate dying without wife or children, *Jessop* v *Watson* 1 Mylne, 665

Clause (c) —The children *en ventre sa mere* are considered born for the purpose of succession *Doe* v *Clark*, 2 H B L 399

Mode of computing degrees of kindred

28 [Suc S 24] Degrees of kindred are computed in the manner set forth in the table of kindred set out in Schedule I.

Illustrations

(*i*) The person whose relatives are to be reckoned, and his cousin german, or first cousin are, as shown in the table, related in the fourth degree ; there being one degree of ascent to the father, and another to the common ancestor, the grandfather , and from him one of descent to the uncle, and another to the cousin german, making in all four degrees

(*ii*) A grandson of the brother and a son of the uncle, *i e*, a great nephew and a cousin german, are in equal degree being each four degrees removed

(*iii*) A grandson of a cousin-german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred

Notes—The degrees of kindred are reckoned according to the civil law, both upwards to the ancestor and downwards to the issue each generation counting for a degree *Mentney* v *Petty*, Pre Ch 593 , *Wallis* v *Hodson*, 2 Atk 117 2 Black Comm 225 , Toller, 88

PART V

INTESTATE SUCCESSION

CHAPTER I

Preliminary

Applicat on of Part.

29. [Suc S 331.] *This Part* shall not apply *to any intesta y occurring* before the first day of January, 1866, or to the property of any Hindu, Muhammadan, Buddhist, *Sikh* or *Jaina*.

(2) [Suc S 2 & Par S 8] *Save* as provided *in sub section* (1) or by any other law for the time being in force, *the provisions of this Part* shall constitute the law of British India in all cases of intestacy

Notes—This section is not applicable to the estates of Hindus, Muhammadans, Buddhists, Sikhs or Jainas Hindu converts are not considered Hindus 48 I A 381=43 A 525=15 L W 1 (P C) But there is no prohibition to a Hindu succeeding to the property of his Christian relatives 15 C W N 158 , 9 M 466 This section must be read subject to the provisions of section 24 of the Special Marriage Act (III of 1872) which runs as follows — Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act, and to the property of the issue of such marriage, shall be regulated by the provisions of the Indian Succession Act, 1865

[illegible]

31 C 11=7 C W N 895=30 I A. 249 , , 8 M I A 400 , 3 M H C R 50 , 23 [illegible]rson ceasing to be a Hindu cannot elect 43 A 525=48 I P. 381 (P C) A 24 Ind Cas 638 , but see 48 I A. 553

Brahmos—A person by becoming a Brahmo does not necessarily cease to be a Hindu 26 C W N 799, 1 P L R 251, 31 C 111 P C

Buddhist—The term includes *Tibetan*, *Lepchas* in Brit sh India and *Burmese* in Burma but does not include *Kalais* who are offspring of Hindu father and Burmese mother 48 I A 553=66 Ind Cas 609 This term does not include *Chinese* Buddhists 24 Ind Cas 367=7 Bur L T 246

Sikh—Under the old Act the word Hindu included *Sikh* and *Jaina* 1900 P L R 251, 6 I A 15=4 C 744, 10 B H C R 241, 2 Ind Jur 312, 3 A 55, 8 W R 116, 1 A 688 (P C), 30 I A 249 (254)=31 C 11

Jaina—*The Hindu law applicable to three regenerate classes, is applicable to Jainas who are Vyasyas* by origin 23 B 257, 14 C W N 545 (P C), 29 B 316, 1 A 688, 4 C 744 16 B 347, 8 W R C R 116, 3 A 55, 10 B H C R 258

As to what property deceased considered to have died intestate

30 [Suc S 25] A *person is deemed* to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect

Illustrations

(*i*) A has left no Will He has died intestate in respect of the whole of his property

(*ii*) A has left a Will whereby he has appointed B his executor, but the Will contains no other provisions A has died intestate in respect of the distribution of the property

(*iii*) A has bequeathed his whole property for an illegal purpose A has died intestate in respect of the distribution of his property

(*iv*) A has bequeathed 1,000 rupees to B and 1 000 rupees to the eldest son of C, and has made no other bequest, and has d ed leaving the sum of 2,000 rupees and no other property C died before A without having ever had a son A has died intestate in respect of the distribution of 1 000 rupees

Application of the section—This section has no appl cation in the case of Hindus, Muhammadans, Buddhists, Jainas and Sikhs But it applies to Parsis

Intestate—If a person dies without making any Will or if his Will is incapable of taking effect he is said to die intestate 4 B 537 Intestacy arises when the Will is void for any reason 31 M 517, 9 B L R 377=18 W R 359 Total intestacy occurs when the sole legatee and executor predeceased the testator *Re Ford* (1902) 1 Ch 218, *Re Cuffie* (1908) 2 Ch 500

CHAPTER II

RULES IN CASES OF INTESTATES OTHER THAN PARSIS.

Chapter not to apply to Parsis

31 [P Suc S 8] *Nothing in this Chapter* shall apply to Parsis

Devolution of such property

32 [Suc S 26] *The* property of an *intestate* devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules *hereinafter contained* in this Chapter

Explanation—A widow is not entitled to the provisions hereby made for her if by a valid contract made before her marriage, she has been excluded from her distributive share of her husband s estate

Devolution of property—The rules as regards devolution and distribut on of intestate s estate are taken from the Statute of D stribution (22 and 23 Car II c 10) as explained by 29 Car II c. 3 s 25 and 1 Jac II c. 17 s 7 which regulate the succession of the deceased s personal property in case of intestacy

Explanation—The explanation is based on English law "The widow's title" says *Sir Edward Vaughan Williams*, 'however, under the Statute of Distribution

may be barred by a settlement before marriage, excluding her from her distributive share of her husband s personal estate , a- . . . . . .
may be barred of her right by such a
approbation of her parents or guardians *L*
on Executors, 11th Ed p 1233 , see al-
Seaton v *Seaton*, 13 App 61 at p 67

Where intestate has left widow and lineal descendants or widow and kindred only, or widow and no kindred

33 [Suc S 27] Where the intestate has left a widow—

(*a*) if he has also left any lineal descendants one third of his property shall belong to his widow, and the remaining two thirds shall go to his lineal descendants, according to the rules hereinafter contained ,

(*b*) "*save as provided by section 33A* * if he has left no lineal descendant, but has left persons who are of kindred to him one half of his property shall . . . of kindred to

. . . le of his pro perty shall belong to his widow

Notes—In *Nepenbala* v *Sitikanta* 15 C W N 158=12 C L J 450 One Hari pada originally a Hindu embraced Christianity and thereafter died leaving behind his wife *Nepenbala*, brother *Sasibhusan* and one sister *Mandakini* In the case *Nepenbala* is entitled to ½, *Sasibhushan* ¼ and *Mandakini* ¼

Clause (c)—Where a bastard or other p- . . .
leaving a widow but no children, the widow
to the whole of his personal estate but to one
to the other *Cave* v *Roberts*, 8 Sim 214
to whole of her husband s estate

Special provision where intestate has left widow and no lineal descendants

†**33A** [New] (1) Where the intestate has left a widow but no lineal descendants and the nett value of his property does not exceed five thousand rupees the whole of his prop rty shall belong to the widow

(2) Where the nett value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent per annum until payment

(3) The provisions for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees with interest as aforesaid and such residue shall be distributed in accordance with the provisions of section 33 as if it were the whole of such intestate's property

(4) The nett value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expen es of the intestate, and all other lawful liabilities and charges to which the property shall be subject

(5) This section shall not apply—

(*a*) to the property of —

(*i*) any Indian Christian

(*ii*) any child or grandchild of any male person who is or was at the time of his death an Indian Christian, or

---

* The words within quotations have been added by Act 40 of 1926

† Section 33A has been added by Act 40 of 1926.

(iii) any person professing the Hindu, Buddhist, Sikh or Jaina religion the succession to whose property is, under section 24 of the Special Marriage Act, 1872, regulated by the provisions of this Act,

(b) unless the deceased dies intestate in respect of all his property

Notes—This section is based on Statute 53 and 54 Vict c 29 (the Intestate's Estate Act)

34 [Suc. S 28] Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him not being lineal descendants, according to the rules hereinafter contained, and, if he has left none who are of kindred to him, it shall go to the Crown

Where intestate has left no widow, and where he has left no kindred

Notes—This section and sections 32 and 33 lay down the general rules of succession The subsequent sections lay down the rule how the property is to be distributed In case there be no wife then all the estate is to be distributed to and amongst the children The phrase 'lineal descendants" means descendants born of lawful wedlock 12 Bur L T 48=10 L B R 77=51 Ind Cas 542 30 B 500 Where there is no next of kin the Crown by virtue of its prerogative stands in their place and the whole property goes to the Crown *Jaylor* v *Hay Garth*, 14 Sim 8, *Powell* v *Merrett*, Sim 1 Giff 381

35 [Suc S 43] A husband surviving his wife has the same rights in respect of her property, if she died intestate, as a widow has in respect of her husband's property, if he dies intestate

Rights of widower

Husband's right—Under this section a husband can only succeed to half of his wife's property in case the wife dies intestate leaving no lineal descendant In the absence of the next of kin, however, the husband would be entitled to the whole of the property as his wife's heir. 87 Ind Cas 354=A I R (1925) Mad 1110

Distribution where there are lineal descendants

36 [Suc S 29] The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants *shall be those contained in sections 37 to 40*

Rules of distribution

Only Child—Where there is no widow but only a child, the child is entitled to the whole *Dovers* v *Dovers*, 3 P Wms 49 N (D) *Palmer* v *Gerrard* Pre Ch 21

37 [Suc. S 30] Where the intestate has left surviving him a child or children *but no more remote* lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one or shall be equally divided among all his surviving children

Where intestate has left child or children only

Notes—The expression 'child' does not include illegitimate child *Smith* v *Massey*, 30 B 500, see also 11 B L R App 6 But it includes a posthumous child *Wallis* v *Hudson*, 2 Atk 107, *Barnett* v *Mann* 1 Ves Sen. 165

38 [Suc S 31] Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there is only one or shall be equally divided among all his surviving grand children

Where intestate has left no child but grandchild or grand children

Illustrations

(i) A has three children, and no more John Mary and Henry They all die before the father, John leaving two children Mary three, and Henry four After

made A d as n estate lea es those ne grandchildren and no descendant of any children will have one ninth
child, then the whole is equally divided the children of John and Mary

Notes—This section is applicable when an intestate has left behind only grand children and no more remote descendants or any child in such a case the grand children take *per capita* The illustration (*a*) is based on *Walsh* v *Walsh*, 1 Eq Ca Abr 249

39 [Suc S 32] In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great grand children to him, or are all in a more remote degree

Where intestate has left only great grandchildren or remoter lineal descendants

Scope of the section—This section is applicable when all the descendants are in the same degree, *i e*, all of them are either great grandchildren or remoter descendants of the same degree The principle underlying this section is the same as in two previous sections

40 [Suc S 33] (1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him

Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead

(2) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease, and one of such shares shall be allotted in respect of each of such deceased lineal descendants, and the share allotted in respect of each of such deceased

parents would have been entitled to respectively if such parent or parents had survived the intestate

Illustrations

(*i*) A had three children John, Mary and Henry, John died leaving four children
lone survived the father On the death of
one third to John s four children and the

ndchildren and two children of a deceased
o nine parts, one of which is alloted to
nth is equally divided between the two

(*iii*) A has three children, John, Mary and Henry, John dies leaving four children, and one of Johns children dies leaving two children Mary dies leaving one child A afterwards dies intestate One-third of his property is allotted to Henry, one third to Mary's child and one third is divided into four parts, one of which is allotted to each of John's three surviving children and the remaining part is equally divided between John's two grandchildren

(*iv*) A has two children, and no more, John and Mary John dies before his father, leaving his wife pregnant Then A dies leaving Mary surviving him and in due time a child of John is born A's property is to be equally divided between Mary and the posthumous child

Notes—Sections 37, 38
all of the same degree, but th
are not of the same degree
two grandsons by a predecea

Distribution where there are no lineal descendants

41 [Suc S 34.] Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) *shall be those contained in sections 42 to 48*

Rules of distribution where intestate has left no lineal descendants

Widow s share—The widow's share under s 33 is half when the intestate left behind no leneal descendants

Where intestate's father living

42 [Suc. S 35] If the intestate's father is living, he shall succeed to the property.

Notes—When a child dies intestate, without wife or lineal descendants leaving behing his father and other relatives, the father gets the whole property *Blackborough* v *Davis*, 1 P Wms 51 A Hindu father can also inherit the property of his Christian son 9 M 466

43. [Suc. S. 36] If the intestate s father is dead, but the intestate s mother is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares

Where intestate s father dead but his mother, brothers and sisters living

Illustration

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry and sister Mary, who is the daughter of his mother but not of his father The mother takes one fourth, each brother takes one fourth and Mary the sister of half blood, takes one fourth

and sisters like the father

s 7 The reason for the

under the common law will

go to her husband *Blackborough* v *Davis*, 1 P Wms 49 A stepmother who is not a blood relation cannot claim anything *Rutland* v *Rutland*, 2 P Wms 216 The term 'brothers and sisters" includes brothers and sisters of the half blood *Jessop* v *Watson* 1 M & W 665

44 [Suc S 37] If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate s lifetime are also living then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate s death

Where intestate's father dead and his mother a brother or sister, *and children of any deceased brother or sister, living*

Illustration

A, the intestate, leaves his mother, his brother John and Henry, and also one child of a deceased sister, Mary and two children of George, a deceased brother of the half blood who was the son of his father but not of his mother The mother takes one fifth, John and Henry each takes one fifth, and child of Mary takes one-fifth, and two children of George divide the remaining one fifth equally between them

Scope—This section makes provisions where there are mother, brother or sister or both, and nephew or niece or both Ordinarily the nephew and niece do not take as representing their deceased parents, unless a brother or s ster of the intestate survives him *Walsh* v *Walsh*, (1695) Pre Ch 54; *Lloyd* v *Trench*, (1750) 2 Ves Sen 212

Where intestate's father dead and his mother and children of any deceased brother or sister living

45. [Suc. S 38] If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares, only the shares which their respective parents would have taken if living at the intestate's death.

Illustration

[illegible]

Notes—The term children does not include remoter issue *Stanley* v *Stanley*, 1 Atk 455, *Petts' Case* (1691) 1 P Wms 25, *Carter* v *Crawley*, (1683) Raym 500

Where intestate's father dead but his mother living and no brother, sister, nephew, or niece

46 [Suc S 39] If the intestate's father is dead but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother

Notes—If the intestate leaves no issue and no brothers or sisters or children of brothers or sisters the mother (subject to the claim of the widow if any) takes as next of kin *Stanley* v *Stanley*, (1739) 1 Atk 455

Where intestate has left neither lineal descendant, nor father nor mother

47. [Suc. S 40] Where the intestate has left neither lineal descendants, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate s death

Notes—Where relatives within the limits prescribed for representation are in equal degree, they take *per capita*, but where they stand in unequal degree or claim by representation, they take per *stripes* *Kelly's Heirs* v *Mc Guire* 15 Arkansas, 355, *Blake* v *Blake* 85 Indiana, 66

Where intestate has left neither lineal descendant nor parent, nor brother, nor sister

48 [Suc S 41] *Where* the intestate *has* left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him

Illustrations

(i) A, the intestate has left a grandfather and a grandmother and no other relative standing in the same or a nearer degree of kindred to him They being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intest [illegible]

(ii) A, the intestate [illegible] uncles and aunts, and [illegible]

[illegible] ther or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him They will each take one eleventh of the property

Notes—Where no brother or sister of the intestate exists nephews take *per capita* otherwise *per stirpes* *Lloyd* v *Tench*, 2 Ves 215, *Walsh* v *Walsh* Pre Ch 54, *Bowers* v *Littlewood* 1 P Wl 595

49 [Suc S 42] Where a distributive share in the property of a person who has died intestate is claimed by a child or any descendant of a child of such person no money or other property which the intestate may, during his life, have paid given or settled to or for the advancement of the child by whom or by whose descendent the claim is made shall be taken into account in estimating such distributive share

Children s advancements not brought into hotchpot

Scope of the Sect
served We propose
intestacy anything whi
by way of advancemer
rule though founded upon a desire to equalise as far as possible the benefit derived by children from their father s property, often fails to effect that object and proves productive of considerable inconveniences It tends to encourage minute and

CHAPTER III

Special Rules for Parsi Intestates

50 [P Suc S 1] Where a Parsi dies leaving a widow and children, the property of which he *dies* intestate shall be divided among the widow and children so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter

Division of property among widow and children of intestate

Notes—Widows and children are preferred to brothers and sisters 4 B 537

51 [P Suc S 2] Where a female Parsi dies leaving a widower and children the property of which she *dies* intestate shall be divided among the widower and such children so that his share shall be double the share of each of the children

Division of property among widowers and *children* of intestate

Notes—Widowers means a widower relatively to the deceased wife only and without consideration of the fact or possibility of the widower remarrying 11 B 1 There is no distinction as to estates whether in possession or remainder, nor does the Act say from what date it shall come into force and it applies to any Parsi woman dying intestate, and possessed of property after the Act came into operation 5 Bom L R 252

52 [P Suc S 3] When a Parsi dies leaving children but no widow, the property of which he *dies* intestate shall be divided amongst the children so that the share of each son shall be four times the share of each daughter

Division of property amongst the children of male intestate who leaves no widow

53 [P Suc S 4] When a female Parsi dies leaving children but no widower, the property of which she *dies* intestate shall be divided among the children in equal shares

Division of property among the children of female intestate who leaves no widower

Notes—*Vide* 7 Bom L R 207.

Division of pre deceased child's share of intestate's property among the widow or widower and issue of such child

54 [P Suc S 5] If any child of a Parsi intestate has died in his or her lifetime, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death.

Notes—*Vide* 1 B. 506, 11 B 1

Division of property when the intestate leaves a widow or widower but no lineal descendants

55 [P Suc S 6] Where a Parsi dies leaving a widow or widower, but without leaving any lineal descendants,—

(*a*) his or her father and mother, if both are living or one of them if the other is dead, shall take one moiety of the property *in respect of which he or she dies* intestate, and the widow or widower shall take the other moiety, *provided that*, where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother,

(*b*) where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side in the order specified in Part I of Schedule II, shall take the moiety which the father and the mother would have taken if they had survived the intestate The next of kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity

(*c*) *where* there are no relatives on the father's side, the intestate's widow or widower shall take the whole

Notes—*Vide* 1 B 566

Division of property when the intestate leaves neither widow nor widower, nor lineal descendants

56 [P Suc S 7] When a Parsi dies leaving neither lineal descendants nor a widow or widower, his or her next of kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property as to which he or she dies intestate The next of kin standing first in Part II of the same Schedule shall be preferred to those standing second, the second to the third, and so on in succession provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity

Notes—The application of this section is confined to cases where there are no widow or widower or lineal descendants Widows and children come in before brothers and sisters Only in cases where the deceased left neither lineal descendants nor a widow or widower, as the case may be the provisions of this section and Sch II Part II, would apply 4 B 537

PART VI

TESTAMENTARY SUCCESSION

CHAPTER I

Introductory

Application of certain provisions of Part to a class of Wills made by Hindus, etc.

57 [H W Ss 2 & 9] The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein apply—

(a) to all Wills and codicils made by any Hindu Buddhist Sikh or Jaina on or after the first day of September 1870 within the territories *which at th said date were* subject to the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits and

(c) to all Wills and codicils made by any Hindu Buddhist Sikh or Jaina on or after the first day of January, 1927, to which those provisors are not applied by clause (a) and (b) *

Provided that marriage shall not revoke any such Will or codicil †

Notes—All Wills made by Hindus Ja nas S khs or Buddhists should n v be reduced to writing s gned and attested

58 [Suc S 331] (1) The provisions of this Part shall not apply to testamentary succession to the property of any Muhammadan nor save as provided by *se tion 57* to testamentary succession to the property of any Hindu Buddhist Sikh or Jaina nor shall they apply to any Will made before the first day of January 1865

General appl cation of Part

[Suc S 2] (2) *Save as provided i i sub sect on* (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of British India applicable to all cas s of tes amentary succes ion

made by Muhammadans or by ot governed by s 57 are not regu e wr ten I ey do not require the Will should be vritten So also 56 In such cases a non upative I A 1 7 A 163 10 M 251 But the la v is no v cl anged *vide* sub section (c) *supra*

CHAPTER II

Of Wills and Codicils

59 [Suc S 46] Every person of sound mind not being a minor may dispose of his property by Will

Person capable of making Wills

Explanation 1—A married woman may dispose by Will of any property which she could alienate by her own act during her life

Explanation 2—Persons who are deaf or dumb or blind are not thereby incapacitated for making a Will if they are able to know what they do by it

Explanation 3—A person who is ordinarily insane may make a Will during an interval in which he is of sound mind

Explanation 4—No person can make a Will while he is in such a state of mind whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing

Illustrations

mmed ate ne ghbourhood and can t understand ng as to the nature to him or in whose favour it cannot make a val d Will

* Added by Act 18 of 1929
† S b-section (2) after this has been repealed by Act 18 of 1929

(*ii*) A executes an instrument purporting to be his Will, but he does not understand the nature of the instrument nor the effect of its provisions This instrument is not a valid Will

(*iii*) A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a Will This is a valid Will

Scope of the Section —Under the Indian Succession Act every person of sound mind and not a minor may dispose of his property by Will All that is now required is that a testator at the time of making his Will must be fully cognisant of its contents, and be in a condition to exercise, and must in fact exercise thought, judgment and reflection respecting the act he is doing Under this Act, an alien, a *felo de se and even a convicted criminal can dispose of his property by Will (Henderson*, 73)

Testamentary capacity, what it is —No person is considered capable of making a valid Will, unless he be of a 'sound mind memory and understanding' The

nderstanding must be sound in order must be a memory to recall all the the testator s bounty, and an under o himself and their claims upon him *Per Sir J Hannen in Broughton* v *Knight*, (1873) 3 P & D at p 65 A sound disposing mind does not mean a perfectly balanced mind

Sound and disposing mind —'As to the testator's capacity he must in the language of the law have sound and disposing mind and memory In other words, he ought to be capable of making his Will with an understanding of the nature of the business in which he is engaged, a recollection of the property he means to dispose

be in a state of extreme imbecility and yet he may possess sufficient understanding to direct how his property shall be disposed of, his capacity may be perfect to dispose of his property b

business, as for instance
men, at different periods
sition of their property
committed to writing,
than they could in comprehending business in some measures new" *Harrison* v *Rowan*, 3 Washington 583 referred to in *Sloon* v *Maxwell*, 2 H W Green and approved in *Banks* v *Goodfellow* L R 3 Q B 549, see also *Smith* v *Tebbit*, (1867) 8 P & D 400, *Swinfen*, v, *Swinfen* 1 F & F 584, *Broughton* v *Knight*, (1873) 3 P & D 64, *Burdet* v *Thomson*, (1873) 3 P & D 72 N, *Birkin* v *Wing*, (1890) L T 80, *Monosseh* v *Shapurji* 10 Bom L R 1004 (1008), *Harwood* v *Baker*, 3 Moo P C 282, 50 C 100=35 C L J 569 23 C 1 P C, 10 Ind Cas 130, 47 C 1043=24 C W N 860 25 C 824=25 I A 109 1) C W N 826, 25 C 824 P C, 85 Ind Cas 581, 41 C L J 320, 72 Ind Cas 88, 21 C 279, 23 Bom L R 1068=64 Ind Cas 257, 10 M L T 304=190 1 M W N 330=12 Ind Cas 393, 19 C W N 826, 13 C W N 1128, 28 Ind Cas 959

Will instruction of which is given while in health —Where a testator health and executes the document prepared even a slight proof of knowledge and ll be valid, though at the time of the at he has given those instructions but be is n accordance with them 35 C L J, see also *Perera* v *Perera* (1901) App I A 429, 22 B 17, 13 C W N 1128,

Burden of proof —' The *onus probandi* lies in every case upon the party propounding the Will, and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable testator In all cases

the onus is imposed on the party propounding a Will ; it is in general discharged by proof of capacity and that the fact of execution from which the knowledge of an assent to the contents of the instrument is assumed' *Barry* v *Butlin* 2 Moo P C 482, see also 85 Ind Cas 58, 21 C 279, 24 C W N 860, 5 Lah 263, 69 Ind Cas 572, 41 C L J 300, 47 Ind Cas 963, 12 Ind Cas 49, 32 M 400, 38 C 355, 19 C W N 747, 26 C W N 113, 25 C W N 779, 24 C W N 674, 59 Ind Cas 535, A I R 1926 (P) 269

Expl (2) —One who is deaf and dumb from his nativity is presumed to be an idiot, and therefore is incapable of making a Will but such presumption is rebutted if it sufficiently appears that he understands what a testament means and has a desire [illegible] also *In the goods of Geals*, 3 Sw & Tr 43 [illegible] Tr 461 ; *In the Estate of Hollam* 108 L T 7 [illegible] Moo P C 198

Expl (3) —'If you can establish' said *Sir William Wynne*, 'that the party afflicted habitually by a malady of the mind has intermissions and if there was an intermission of the disorder at the time of his act, that being proved is sufficient and the general habitual insanity will not affect it' *Cartwright* v *Cartwright* (1793) 1 Phill 100, see also *Att Gen* v *Paruther*, (1792) 3 Bro C C at p 444, *Hall* v *Warren*, 9 Ves 611, *Ex party Holyland*, (1805) 11 Ves 11; *White* v *Driver*, Phill 88 *Brogden* v *Brown*, 2 Add 445, *Nichols* v *Binns*, 1 S v & Tr 239, 31 C 885

Drunkenness—*Vide Wheeler*, v *Aldersons*, (1831) 3 Hagg, 602, 24 C W N 860=47 C 1043, 55 Ind Cas 798

Physical infirmity etc—*Mountain* v *Bennet* (178?) 1 Cox p 356, 23 C L= [illegible]

55 P R 1894

60. [Suc S 47] A father, whatever his age may be, may by Will appoint a guardian or guardians for his child during minority.

Testamentary guardian

Notes—'By the law of England,' said *Lord Esher* in the case of *In re Agar Ellis*, 24 Ch D 317, 'the father has the control over the person, education and conduct of his children until they are twenty one" A Hindu mother cannot appoint by Will a guardian for his child 8 M L J 112

61 [Suc S 48] A Will or any part of a Will, the making of which has been caused by fraud or coercion or by such importunity as takes away the free agency of the testator, is void

Will obtained by fraud, coercion or importunity

Illustrations

(*i*) A falsely and knowingly represents to the testator that the testator's only child is dead or that he has done some undutiful act and thereby induces the testator to make a Will in his A's favour, such Will has been obtained by fraud and is invalid

(*ii*) A, by fraud and deception prevails upon the testator to bequeath a legacy to him The bequest is void

(*iii*) A, being a prisoner by lawful authority makes his Will The Will is not invalid by reason of the imprisonment

(*iv*) A threatens to shoot B, or to burn his house or to cause him to be arrested on a criminal charge unless he makes a bequest in favour of C B, in consequence, makes a bequest in favour of C The bequest is void the making of it having been caused by coercion

(*v*) A, being of sufficient intellect, if undisturbed by the influence of others, to make a Will, yet being so much under the control of B, that he is not a free agent makes a Will, dictated by B It appears that he would not have executed the Will, but for fear of B The Will is invalid

(*vi*) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a Will of a certain purport and does so merely to purchase peace and in submission to B The Will is invalid

(*vii*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition makes his Will in the manner recommended by B The Will is not rendered invalid by the intercession and persuasion of B

... and flatters ... nsequeuce of ... to A The

Principle — ...

Mountain v *Bennet* 1 Cox 355

Any part of a Will—If a part of a Will had been obtained by fraud only such part is void, and probate ... *pherson* 1 H L C 191 *Rhodes* ... *Dunne*, 2 Sw & Tr 590, *Trim* ... *Morrel* v *Morrel*, (1881) 7 P D ... *ratne* v *Ferdinaudus*, (1902) A C 405

Fraud—Fraud is a false representation There must be an active attempt to deceive either by a ... accompanied by ... *Anson's Contract*, ... mis statement of fact, as that the ... false" *Per Lord Cairns* in *Perk* v *Gurney*, 6 H L C p 403 It is not necessary that the plaintiff should be benefited by the deceit or that he should collude with the person who is *Pasley* v *Freeman* 3 T R 51 The fact that a Will has been obtained by fraud is sufficient ground for setting it aside *Lord Donegal's Case*, (1751) 2 Ves Sen 408, see also *Allen* v *Macpherson*, 1 H L C 207

Coercion—Illustrations (iv) and (v) show cases of coercion No definition of coercion is given in the Act If it is demonstrated that actual force was used to compel the testator to make the Will there can be no doubt that although the formalities required have been complied with, as the existence of the testamentary capacity was shown to exist yet such a Will can never stand *Mountain* v *Bennet*, 1 Cox, 355 A Will obtained by threat is invalid *Nelson* v *Oldfield* (1688) 2 Vern 76 In order to vitiate a Will the fear must amount to coercion which destroys free agency *Williams* v *Gonde* 1 Hagg 481, *Wingrove* v *Wingrove*, L R 11 P D 81, *Guthrie* v *Abudl*, 14 M I A 53

Importunity—Importunity, in its correct legal acceptation, must be in such a degree as to take away the testator's free agency, it must be such importunity ...

Undue influence—"There is another ground which though not so distinct ...

I L R 482, A I R 1924 P C 28, 23 C W N 690, 5 C L J 484, 43 M 546, 22 B 17, 49 Ind Cas 794, 11 C 61, 19 C 174

Undue influence and Fiduciary relation—In equity persons standing in certain relations to one another, such as parent and child (*Archer* v *Hudson*, 7 Beav 551) man and wife (*Cobbett* v *Brook* 20 Beav 524), doctor and patient (*Dent* v *Bennet* 4 My & Cr 269), attorney and client (*Gibson* v *Jeyes*, 6 Ves 266), confessor and penitent, guardian and ward (*Hatch* v *Hatch*, 9 Ves 297)—are subject to certain presumptions when transactions made between them are brought in question, and if a gift or contract made in favour of him who holds the position of influence is impeached by him who is subject to that influence, the Courts of Equity cast upon the former the burden of proving that the transaction was fairly conducted as if [illegible] —pressed by the natural influence [illegible] *vless*, (1872) 2 P & D 462 at p [illegible] m L R 911, 47 C 1043, 37 C [illegible] L B R 141=4 Ind Cas 1034, [illegible] 11 M I A 551, 34 I A 156, 41 I A 23

As regards Wills executed under suspicious circumstances, *vide* 41 C L J 300, 16 C W N 265, 26 C W N 113, 89 Ind Cas 89 (P C)

Burden of proof—The *onus probandi* lies upon the person who propounds the Will, *Baker* v *Batt*, 2 Moo P C 317 But where it has been proved that a Will has been duly executed by a person of competent understanding and apparently a free agent, the burden of proving that it was executed under undue influence is upon the party who alleges it *Boyes* v *Rossborough* 6 H L C 6, 29 C W N 45 (P C)

Will may be revoked or altered

62 [Suc S 49] A Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will

Revocable nature of Wills—A testamentary intention is ambulatory till death and a Will in its nature is a revocable instrument, *Colvin* v *Fraser*, (1829) 2 Hagg, at p 326 Even where a [illegible] testator it can be revoked *Veyn* [illegible] *Omanny* 23 Ch D 285, *Harmsley* [illegible] 14 C W N 174 So a man ma[illegible] possession of his senses This is the characteristic feature of a Will and it distinguishes it from a deed 12 C W N 92 No suit for cancellation of Will can lie in the lifetime of the testator 27 A 14=1 A L J 468

CHAPTER III

OF THE EXECUTION OF UNPRIVILEGED WILLS

Execution of unprivileged Wills

63 [Suc S 50] Every testator, not being a soldier employed in an expedition or engaged in actual warfare, "or an air man so employed or engaged,"* or a mariner at sea, shall execute his Will according to the following rules —

(*a*) The testator shall sign or shall affix his mark to the Will or it shall be signed by some other person in his presence and by his direction

(*b*) The signature or mark of the testator or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will

(*c*) The Will shall be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator, a personal

* Added by Act X of 1927

acknowledgement of his signature or mark, or of the signature of such other person, and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary

Scope of the section—This section lays down the formalities required by the law for the execution of a valid Will by every testator not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea Such a Will shall be duly executed by the testator as laid down in clauses (*a*) and (*b*) and must be attested by at least two attesting witnesses But a Will can be proved in the Court of Probate by one of the attesting witnesses 22 C W N 315=43 Ind Cas 208

Must—The observance of the formalities is imperative 3 N W P H C 32

Execution—"Execution" when applied to a document is the last act or series of acts which completes it 19 B 635, see also 1925 Oudh 337=12 O L J 1

Shall s...

Will *Re Myer* (1908) P 353, *Alagppa* puts his initials in a proper place it is ...vory, 15 Jur 1042, *In bonis Wingson*, ... Jur 1161, 14 M I A 67

Mark—Affixing of a mark by the testator is sufficient But the mark must have a trace It is not sufficient to touch the paper with a dry pen *Kavil* v *Lynch*, Ir R 8 Eq 244 Even when an executor can write he can execute a Will by affixing a mark on it *Taylor* v *Dening*, 3 N W P 228; *Baker* v *Dening*, 8 Ad & Ell 94, *Donelly* v *Broughton*, (1891) A C 435 An assumed name of initial can be considered as a mark *In bonis Savory*, 15 Jur 1042, 58 Ind Cas 134=7 O L J 406 A Will is not invalidated by reason of a testator being wrongly named in the Will *In bonis Donee*, 8 Jur N S 723 If a testator, in making his mark, is assisted by some other person and acquiesces and adopts it, it is just the same as if he had made it without any assistance 22 C L J 262, 15 A W N 127 But a mere touching of a pen and handing it over to another who affixes the mark in the testator s presence is not an affixure of his mark 40 M 550, 45 B 949, 13 B L R 392

... re of a Will for the testa... 11 B H C R 87, 31 ... C 226 The impression ... ne other person in the ... ting of a mark but really the affixing of the name to the document 25 C 911=2 C W N 642

By his direction—*In order to constitute a direction, it is not necessary that* anything should be said *Wilson* v *Beddaw*, (1841) 12 Jur 28, 22 C L J 262=19 C W N 1295=21 Ind Cas 677

Position of testator s signature—This section does not lay down any positive rules as to where Wills are to be signed *Hend Third Ed* 51, 19 C W N 1297, 27 C 169, 24 C 169

Clause (3)—The object of attestation is that some person should verify that the deed was signed voluntarily 37 C 526=14 C W N 974 Attestation must follow execution 3 B 382, 2 W R C R 322, 5 C 578, 6 C 17=6 C L R 303 ... L R 359 A document must ... 37 C 526=11 C L J, 563=14 ... r which is not attested cannot be

Each of whom must see—It is sufficient compliance as regards attestation with the requirements of this clause if one witness proves that he saw the testator affix his mark to the Will and the other that he received an acknowledgement from him It is not necessary that each of the wi n'sses must prove the same state of things 22 C L J 262=27 Ind Cas 677=19 C W N 1295 1915 M W N 285 It is not necessary for a witness to actually see the fingers of the testator move as the signature is made 58 Ind Cas 138, 58 Ind Cas 945

Personal acknowledgement—When a paper is produced by a testator to the witnesses with his name s gned there ... r seeing his name, and they ... ent at the same time this ... Ind Cas 401, 6 C 17 ... 6 C L J 453

Evidence of due execution—It is absolutely necessary to have pos tive affirmative testimony by the subscribing witnesses, that the Will was actually s gned in their presence or actually acknowledged in their presence 20 C W N 19' But a mere fact that the attesting witnesses to a Will have repudiated the r signature does not invalidate the Will if it can be proved by evidence of a reliable character that they have given false test mony 22 W R 189, *Cooper v Beckett*, 4 Moo P C 419 To prove the due execution of a Will for the purpose of getting probate of it strict affirmative proof of due attestation is not absolutely necessary, and if from circumstances the Court can reasonably come to the conclusion that the Will has been duly executed probate may be given 4 C W N 204 30 M L J 55 P C = 20 C W N 673 Where the witnesses do not remember the facts attendant upon the execut on of the Will the *prima facie* presumption is that the testator signed in the presence of the witnesses 3 Ind Cas 426=10 C L J 499, 10 C L J 664, A I R (1926) Cal 1

Who are competent to be attesting witnesses—A scribe who executes the document for and on behalf of the executant is not competent to become an attesting witness to attest the signature he h mself has written out 26 C W N 264, 46 C 522= 23 C W N 290, 9 C 226, 11 C 426 11 B H C R 87, 1 Pat 300 Otherwise a scribe is a good attesting witness 48 C 61 A Will can be attested ... t fact does not invalidate a Will 22 I ... Vill should not be held invalid simply ... were not of a superior position 20 ...

64 **[Suc, S 51]** If a testator, in a Will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions such document shall be *deemed to form* a part of the Will or codicil in which it is referred to

Incorporation of papers by reference

Scope—*If the testator in a Will or codicil or other testamentary paper* duly executed refers to an existing unattested Will or other paper, the instrument so referred to becomes part of the Will 25 A 171=30 I A 54 So where a document is referred to in a Will with a view to ... testamentary document 29 B 267=... viously executed by the testator was ... of making its contents part of the Wil... document requiring probate although the Will in terms purported to confirm the deed 29 B 530 P C =9 C W N 769

CHAPTER IV

OF PRIVILEGED WILLS

65 **[Suc S 52]** Any soldier being employed in an expedition or engaged in actual warfare 'or an air man so employed or engaged' * or any mariner being at sea may, if he has completed the age of eighteen years, dispose of his property by

Privileged Wills

* Added by Act X of 1927

a Will made *in the manner provided in section 66.* Such Wills are called privileged Wills

Illustrations

pedition
Will
mariner,

aged in

yage is temporarily on shore
of this section, a mariner at

(*v*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship is not considered as at sea, and cannot make a privileged Will

(*vi*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged Will

Soldier—The term soldier includes an officer and a surgeon, *Drummond* v *Parish*, 3 Court, 522

Mode of making, and rules for executing, privileged Wills

66 [Suc S. 53] (1) Privileged Wills may be in writing, or may be made by word of mouth

(2) The execution of *privileged Wills* shall be governed by the following rules —

(*a*) The Will may be written wholly by the testator, with his own hand In such case it need not be signed or attested

(*b*) It may be written wholly or in part by another person, and signed by the testator In such case it need not be attested

(*c*) If the instrument purporting to be a Will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his Will, if it is shown that it was written by the testator s directions or that he recognised it as his Will

(*d*) If it appears on the face of the instrument that the execution of it in the manner intended by *the testator* was not completed, the instrument shall not, by reason of that circumstance, be invalid provided that his non execution of it can be reasonably ascribed to some cause other than the abandonment of

written instructions for the
l be prepared and executed,
Will

s in the presence of two witnesses, given verbal instructions for the preparation of his Will and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him

(*g*) The soldier, "*airman*"* or mariner may make a Will by word of mouth by declaring his intentions before two witnesses present at the same time

(*h*) A Will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged Will

to come
it gives
it of his

* Added by Act X of 1927

CHAPTER V

OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS

67 [Suc S 54] A Will shall not be deemed to be insufficiently attested by reason of any benefit thereby given either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband, but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them

Effect of gift to attesting witness

Explanation—A legatee under a Will does not lose his legacy by attesting a codicil which confirms the Will

Application—This section is not applicable to Hindus, Buddhists, Sikhs or Jainas, as such legatees under Wills of such persons do not forfeit their legacies by becoming attesting witnesses By section 19 of the Oudh Estates Act, 1869 this section has been made applicable to the Will and codicils of Talukuders of Oudh 85 Ind Cas 558 The extension of the prohibition to the wife seems to rest on the unity of interest between the husband and the wife 4 M 244

68 [Suc S 55] No person, by reason of interest in, or of his being an executor of a Will *shall be* disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof

Witness not disqualified by interest or by being executor

Notes—This section is based on ss 16 & 17 of the English Wills Act (Stat 1 Vict, c 26)

69 [Suc S 56] Every Will shall be revoked by the marriage of the maker, except a Will made in exercise of a power of appointment, when the property over which the power of appoinment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy

Revocation of Will by testator's marriage

Explanation—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property

Notes—To revok [illegible] of this country *Mete* v *Mete* (1 [illegible] D 157 A second marriage of a [illegible] and during the lifetime of his firs [illegible]

70 [Suc S 56] No unprivileged Will or codicil, nor any part thereof shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same

Revocation of unprivileged Will or codicil

Illustrations

[illegible] Will Afterwards A makes another unprivileged [illegible] This is a revocation [illegible] Will Afterwards, A being entitled to make a [illegible] ill, which purports to revoke his unprivileged Will This is a revocation

Scope—The provision of this section, it has been held, is exhaustive Consequently a Hindu Will also [illegible]
section 35 C L J 488 [illegible]
Will of a Hindu could [illegible]
Mys L J 116, 78 Ind [illegible]
Mahomedans 38 Ind [illegible]
Wills of Hindus, Buddh[illegible]
shall be omitted 35 C L J 488 An express clause in a Will, clearly revoking all former Wills revokes all previous Wills as a prior testamentary appointment *Sothern* v *Denning*, 20 Ch D 99, *Re Kingdom*, 32 Ch D 604 It is settled that the burden of proof lies upon the person who challenges the Will that is in existence 19 C 444=19 I A 83 A cancellation of Will, under an erroneous assumption of facts may not operate as a revocation *Williams on Executors*, 11th Ed p 124, see also *In the goods of Moresley*, (1828) 1 Hagg 378, *Doe* v *Evans*, (1839) 10 A & E 228

Application of the doctrine of dependent relative revocation—Some persons think that the doctrine of dependent relative revocation is applicable in cases where a clause revoking a former Will has been inserted in a latter Will by a mistaken notion of facts *Garnett* v *Garnett*, (1901) p 335

Revocation by a lost Will—"It is well settled that a Will duly executed is not to be treated as revoked, either wholly or partially by a Will which is not forthcoming unless it is proved by clear and satisfactory evidence that the later Will contains either words of revocation or disposition so inconsistent with the [illegible]

see also 47 Ind Cas 225

Revocation by inconsistent Will—The question is whether a late testamentary paper is so far inconsistent with an earlier paper as to revoke it is one of [illegible]

50=(1907) [illegible] 125

Tearing—In order to revoke a Will by a tearing, three things are necessary (1) some material portions or portion of the Will must be torn or destroyed such as the signature of the testator and the attesting witnesses, (2) the act or acts must be done with the intention of revoking, (3) the testator must have completed the act or acts he intended to do for the purpose of revocation 20 C W N 304=34 Ind Cas 707

Otherwise destroying—These words occur after the words burning, tearing and as such they must be understood as intending some mode of destruction *ejus dem generis*, as cutting, throwing into water, or the like and therefore exclude cancelling *Will Execu* 11 Ed 98 Where a Will is executed in duplicate the destruction of one part with the intention of revoking the whole Will operates as a revocation of the other part *Colvins* v *Fraser*, (1829) 2 Hagg 266

If a Will is traced into the possession of the testator but it is not found at his death, the presumption is that he destroyed it with the intention of revoking it, and this presumption will prevail unless there is sufficient evidence to rebut it *Rikard* v *Mumford* (1812) 2 Phill 24 Where there is no evidence to prove the actual destruction sa[illegible]
destruction is not prove[illegible]
country where a Will is [illegible]
tion is that it is mislaid [illegible]
929 P C, 45 B 906, 18 [illegible]
or adoption 30 M 869, 26 Ind Cas 457, but see [illegible]

71 [Suc S 58] N~ ᵏᵗ - alteration made r the execution cept so far as the words or meaning of the Will have been thereby rendered illegible or undiscernible, unless such alteration has been executed in like manner as hereinbefore is required for the execution of the Will

Effect of obliteration, in lineation or alteration in privileged Will

Provided that the Will as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the Will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such altera tion, and written at the end or some other part of the Will

Notes—This section provides for obliteration, interlineation or other alteration made after the execution of the Will 19 Ind Cas 692=71 P R 1913 Where unattes ted alterations occur in a Will, the presumption of law is that such alterations were made after the execution of the Will and in the absence of evidence rebutting the presumption, probate will be granted of the Will in the original state, omitting the alteration s 24 C W N 860=47 C 1043, see also 1 C W N 428, 7 M 302

72 [Suc S 59] A privileged Will or codicil may be revoked by the testator by an unpriviledged Will or codicil, or by any act expressing an intention to revoke it and accompained by such formalities as would be sufficient to give validity to a privileged Will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same

Revocation of privileged Will or codicil

Explanation—In order to the revocation of a privileged Will or codicil by an act accompanied by such formalities as would be sufficient to give validity to a privileged Will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged Will

Notes—This section lays down the method of revoking a privileged Will It an act, which validate 3) by burning tearing person in his presence regards the second d not be in a situation

73. [Suc S. 60] (1) No unprivileged Will or codicil, nor any part thereof, which has been revoked in any manner, shall be revived otherwise than by the re execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same

Revival of unprivileged Will

(2) When any Will or codicil, which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the Will or codicil

Notes—This section is applicable not only where the prior Will is revoked by an express clause of revocation, [illegible] incon sistent dispositions obtained in th[illegible] 6; *Boulcott* v *Boulcott*, 2 Drew 25 [illegible] xe cution or by incorporation In a [illegible] 9 Jur 432

CHAATER VI.

Of the Construction of Wills

74 [Suc S 61.] It is not necessary that any technical words or terms of art be used in a Will, but only that the wording be such that the intentions of the testator can be known therefrom

Wording of Will

[illegible] principle to be borne in mind in con[illegible] the testator as expressed in the Will [illegible] rules of construction are only intended [illegible] J 707, 86 Ind Cas 737 In all cases the Court should put itself entirely in testator's position and ascertain from his language what were his intentions A I R 1925 (Oudh) 24 One of the cardinal rules in construing a Will is to avoid intestacy either wholly or partially 1923 Sind 42, see also 86 Ind Cas 1095, 90 Ind Cas 5

Scope of the section —A testamentary document requires no special forms of words (1907) P 326 No technical words are necessary for a Will The true rule of construction in a Hindu as in an English Will is to try and find out the *meaning of the testator, taking the whole document together, and to give effect* to its meaning 13 C W N 525=36 C 566 In determining the construction of Wills the Court must look to the intention of the testator 6 M I A 526=4 W R P C 114, 48 M L J 707, 8 M I A 66, 3 C L J 224 31 M 283, 11 C L J 461, 27 C W N 199, 15 C 282, 29 B 375

75 [Suc. S 62] For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, a Court shall inquire into every material fact relating to the persons who claim to be interested under such Will, the property which is claimed as the subject of deposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used

Inquiries to determine questions as to object or subject of Will

Illustrations

(*i*) A, by his Will bequeathes 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin Mary A Court may make inquiry in order to ascertain to what person the description in the Will applies

(*ii*) A, by his Will, leaves to B 'my estate called Black Acre It may be necessary to take evidence in order to ascertain what is the subject matter of the bequest, that is to say, what estate of the testators is called Black Acre

(*iii*) A, by his Will, leaves to B 'the estate which I purchased of C It may be necessary to take evidence in order to ascertain what estate the testator purchased of C

Notes —In construing a written instrument the situation of the parties must be looked at, and the deeds must be construed with reference to the situation of the parties and their rights at the time the deed was executed 6 M I A 1, see also 24 M L J 418, 36 A 101, 13 L W 657 (P C), 25 C 112 Judges should not, where the language of a Will presents no ambiguity imagine ambiguity in its application to different sets of existing facts and so initiate an enquiry into those facts 12 Bom L R 863, 1 B H C R 71, 13 L W 657 (P C)

76 [Suc S 63] (1) Where the words used in a Will to designate or describe a legatee or a class of legatees sufficiently show what is meant an error in the name or description shall not prevent the legacy from taking effect

Misnomer or misdescription of object.

(2) A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name

Illustrations

(*i*) A bequeathes a legacy to "Thomas the second son of my brother John" The testator has an only brother named John, who has no son named Thomas but a second son whose name is William William will have the legacy

(*ii*) A bequeaths a legacy "to Thomas the second son of my brother John" The testator has an only brother, named John whose first son is named Thomas and whose second son is named William Thomas will have the legacy

(*iii*) The testator bequeathes his property "to A and B the legitimate children of C" C has no legitimate child but has two illegitimate children A and B The bequest to A and B takes effect, although they are illegitimate

(*iv*) The testator gives his residuary estate to be divided among "my seven children" and proceeding to enumerate them, mentions six names only This omission will not prevent the seventh child from taking a share with the others

(*v*) The testator, having six grandchildren, makes a bequest to "my six grandchildren" and proceeding to mention them by their Christian names mentions one twice over omitting another altogether The one whose name is not mentioned will take a share with the others

(*vi*) The testator bequeaths "1,000 rupees to each of the three children of A" At the date of the Will A has four children Each of these four children will if he survives the testator, receive a legacy of 1 000 rupees

Notes—The rule underlying this section rests on the maximum *Id certum est quod certum reddi pottest* (That is certain which can be made certain) By the application of the maxim *falsa demonstratio non nocet* (if there be an adequate and convenient description with convenient certainty of what was intended to pass or who was meant to be a legatee, a subsequent erroneous addition will not vitiate it), the object of the legacy is made certain and as such the legacy is not void This latter maxim practically includes two other maxims *Nihil facit error nominis cum de corpore constat* (an error of name is nothing where there is certainty of person) and *veritas nominis* ... ached to the name than to ... ether a gift to an adopted ... per sonally In such a ... what is the reason or n... ist be drawn from a con... nces 11 C 463=12 I A 72, 20 B [illegible] C, 9 C W N 309, 11 C W N 147, 19 C 452, 25 M 214, 31 A 339, 41 A 666

When words may be supplied

77 [Suc S 64] Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context

Illustration

The testator gives a legacy of "five hundred" to his daughter A and a legacy of "five hundred rupees" to his daughter B A will take a legacy of five hundred rupees

Notes—Where it is clear on the face of a Will that a testator has not accurately or completely expressed his meaning by the words he has used and it is also clear what are the words which he had omitted those words may be supplied in order to effectuate the intention as collected from the context *Jarm in* 6th Ed p 541, see also *Abbott* v *Middleton* 7 H L C 68

Rejection of erroneous particulars in description of subject

78 [Suc S 65] If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect

Illustrations

(*i*) A bequeathes to B "my marsh land lying in L and in the occupation of X" The testator had marsh lands lying in L but had no marsh lands in the occupa

tion of X The words "in the occupation of X shall be rejected as erroneous, and the marsh lands of the testator lying in L will pass by the bequest

(ii) The testator bequeathes to A "my zamindari of Rampur' He had an estate

taluq passes by this bequest

ses within the rule is that

ct at all and so far as it is

Fisher, 4 Exch 591 , see also

C B N S 755 The rule

is a rule of good sense

When part of description may not be rejected as erroneous

79 [Suc S 66] If a Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply

Explanation —In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 78 shall be deemed to have been struck out of the Will

Illustrations

(i) A bequeathes to B' 'my

The testator had marsh lands ly

X, and some not in the occupati

to such of the testator's marsh la

(ii) A bequeathes to B "my marsh lands lying in L and in the occupation of X, comprising, 1,000 bighas of lands ' The testator had marsh lands lying in L some of which were in the occupation of X and some not in the occupation of X The measurement is wholly inapplicable to the marsh lands of either class or to the whole taken together The measurement will be considered as struck out of the Will, and such of the testator's marsh lands lying in L as were in the occupation of X shall alone pass by the bequest

Notes—The rule underlying this section is based upon the 13th maxim of

debent verba in falsam demonstionem

ated the rule as follows 'If I have

are true and some wherein part of

intended words of true limitation to

tances are true As an illustrative

Extrinsic evidence admissible in cases of patent ambiguity

80 [Suc S 67] Where the words of a Will are unambiguous, but it is found by extrinsic evidence that they admit of applications one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended

Illustrations

(i) A man, having two cousins of the name of Mary, bequeathes a sum of money to 'my cousin Mary" It appears that there are two persons each answering the description in the Will That description, therefore admits of two applications, only one of which can have been intended by the testator Evidence is admissible to show which of the two applications was intended

(ii) A, by his Will leaves to B 'my state called Sultanpur Khurd ' It turns out that he had two estates called Sultanpur Khurd Evidence is admissible to show which estate was intended

Notes—The rule underlying the section is mainly based upon the well known maxim of Lord Bacon "*Ambiguitas verborum latens verificatione suppletur* , nam-

quod exfacto oritur ambiguum verificatione factitollitur (*Regul* 23) Latent ambigu ty may be supplied by evidence, for an ambiguity which arises by proof of an extrinsic fact may in the same manner, be removed

Extrins c evidence inadmiss able in case of patent ambi guity or deficiency

81 [Suc S. 68] Where there is an am biguity or deficiency on the face of a Will no extrinsic evidence as to the intentions of the testator shall be admitted

Illustrations

(*i*) A man has an aunt Caroline, and a cousin, Mary and has no aunt of the name of Mary By his Will he bequeathes, 1,000 rupees to 'my aunt Carol ne and 1 000 rupees to my cousin Mary and afterwards bequeathes 2 000 rupees to 'my before mentioned aunt, Mary ' There is no person to whom the descr pt on given in the Will can apply and evidence is not admissible to show who was meant by my before ment oned aunt Mary The bequest is, therefore vo d for uncertainty under section 89

(*ii*) A bequeathes 1,000 rupees to leaving a blank for the name of the legatee Evidence is not admiss ble to show what name the testator intended to insert

(*iii*) A bequeaths to B rupees or 'my estate of Evidence is not adm ssible to sho v what sum or what estate the testator intended to insert

Principal—The province of the Court is to interpret not to make It is to construe the expression the parties h [illegible] others For cases as these extr ns c evidenc [illegible] om the nature of things afford no remedy [illegible] by h s Will as follows In accordance wit [illegible] give in private to trustee No 1, out of the trustees appo nted by me my trustee should entrust to *Haridas* Rs 5 000 that may be received from my life pol cy and the shares of *Tata & Co* also should be transferred to the person whose name will be disclosed by *Haridas* The evidence of *Haridas* as to the private instruction so given to him by the testator was held admissible 40 B 1=27 Ind Cas 946

Meaning of clause to be collected from entire Will

82 [Suc S 69] The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other

Illustrations

[illegible] death of A and by effect of the several A for life and after estator meant to use in a restricted sense the words in which he describes what he gives to A

(*ii*) Where a testator having an estate, one part of which is called Black Acre bequeathes the whole of h s estate to A, and in another part of h s Will bequeaths Black Acre to B the latter bequest is to be read as an exception out of the first as if he had said I give Black Acre to B, and all the rest of my estate to A

Notes—Effect should be given to the whole Will if possible so that every word ought to have effect unless incons stent with the general intention, *Gray Minne* v *Thrope* 3 Ves 105 A codicil is taken as a component part of a Will *Crosbie* v *Mc Donald* 4 Ves 610 In construing a Will importance should not be attached to isolated expressions but the Court must look to all the clauses of the Will and give effect to all the clauses ignoring none as redundant or contradictory 12 C L J 391, 8 C L J 20, see also 9 B L R 377; 11 C 121, 14 M 65, 11 C 684 24 C 934 20 C 606, 14 B L R 226, 31 M 983, 25 C W N 961

When words may be under stood in restricted sense, and when in sense w der than usual

83 [Suc S 70] General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense, and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the Will that the testator meant to use them in such wider sense

Illustrations

(i) A testator gives to A 'my farm in the occupation of B' and to 'C all my marsh lands in L' Part of the farm in the occupation of B consists of marsh lands in L and the testator also has other marsh lands in L. The general words 'all my marsh lands in L," are restricted by the gift to A A takes the whole of the farm in the occupation of B including that portion of the farm which consists of marsh lands in L

(ii) The testator (a sailor on ship board) bequeathed to his mother his gold ring, buttons and chest of clothes and to his friend, A (a shipmate), his red box, clasp knife and all things not before bequeathed The testator's share in a house does not pass to A under this bequest

(ii
china
queat
only
in enumerated

Notes — *Prima facie* general words are to be taken in their larger sense, unless you can find that in the particular case the true construction of the instrument requires you to conclude that they are intended to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before' *Anderson* v *Anderson* (1895) 1 Q B 749 But the meaning of the words must be ascertained from the whole contents of an instrument 20 C W N 463; 38 B 399 23 A 194 (P C), 16 C W N 321, 23 B 571 The meaning of any of the clauses in a Will is to be collected from the entire instrument and all its parts are to be considered with reference to each other 14 M 65=1 M L J 177

Which of two possible constructions preferred

84 [Suc S 71] Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred

No part rejected, if it can be reasonably construed

85 [Suc S 72] No part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it

31 M 349, 17 Bom. L R 182, see also 8 C L. J 20, 32 Ind Cas 209 12 B 702, 19 Ind Cas 833=37 B 644

Interpretation of words repeated in different parts of Will

86 [Suc S 73] If the same words occur in different parts of the same Will, they *shall* be taken to have been used everywhere in the same sense, unless a contrary intention appears

Notes — The words occurring more than once in a Will, shall be presumed to be used always in the same sense, unless a contrary intention appear by the context or unless the words be applied to a different subject"—*Jarman on Wills* 6th Ed. p 221, see also 4 Bom L R 555 But different meanings may be attached to a word

when applied to different subject matters or when it acquires a different meaning by the context *Forth* v *Chapman*, 1 P. Wms 667, see also 10 C 342, 20 B 571, 7 C 218

87 [Suc S 74] The intention of the testator *shall* not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible

Testator's intention to be effectuated as far as possible

Illustration

The testator by a Will made on his death bed bequeathed all his property to C D for life and after his decease to a certain hospital The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 118, but it *will* take effect so far as regards the gift to C D

Notes —Section 85 lays down that effect should be given to each and every ... ng to operation of

W N 345, 2 Ind Cas 311=5 M L J 103

88 [Suc S 75] Where two clauses or gifts in a Will are irreconcileable, so that they cannot possibly stand together, the last shall prevail

The last of two inconsistent clauses prevails

Illustrations

(*i*) The testator by the first clause of his Will leaves his estate of Ramnagar "to A" and by the last clause of his Will leaves it "to B and not to A" B will have it

(*ii*) If a man at the commencement of his Will gives his house to A and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition will prevail

... embodies the maxim *cum duo inter se* ... *ratum est*" (Co Litt. 112b —Where ... shall

not applicable to a Will executed ... the Hindu Wills Act was not extended A I R 1926 Mad 492

This rule has no operation when the supposed inconsistencies are found in one and the same provision 29 B 375=7 Bom L R 236 In order that the rule in this section may be applied the two inconsistent clauses must refer to the same subject matter 2 C W N 417=22 B 833 P C Where there is no repugnancy the clauses will be considered *together* 21 C W N 102 (P. C)=43 I A 183=38 A 446 (P C)

89 [Suc. S 76] A Will or bequest not expressive of any definite intention is void for uncertainty

Will or bequest void for uncertainty

Illustration

If a testator says "I bequeath goods to A," or "I bequeath to A," or "I leave to A all the goods mentioned in the Schedule" and no Schedule is found, or "I bequeath 'money,' 'wheat,' 'oil' or the like, without saying how much, this is void

Notes —Where a testator empowers his executor to lay out such portion of his estate as he may think fit towards charitable purposes and does not dispose of the residue, the bequest is void for uncertainty 4 C 508, 9 M. 325, 22 B 774, 14 B 476; 14 C. 222, 26 B 632

90 [Suc S. 77] The description contained in a Will of property, the subject of gift, shall, unless a contrary intention appears by the Will, be deemed, to refer to and comprise the property answering that description at the death of the testator

Words describing subject refer to property answering description at testator's death

Notes — ... estate comprised in the ... the ... 369 ... Cas

553, 30 Ind Cas 915=17 Bom L R 705

91. [Suc S 78] Unless a contrary intention appears by the Will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by Will to any object he *may think proper*, and shall *operate as an execution of such power*, and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power

Power of appointment executed by general bequest

... special powers *Airey* v *Bower*, ... *Easter*, 42 Ch D 93 A general ... cuted previously to the creation ... 9 Bom L R 488=31 B 472; 19 B 647, (1925) M W N 308 Exercise of power of appointment is not invalid merely for not following requirements as to form of instruments 84 Ind Cas 91= A I R (1925) Cal 140

92 [Suc S 79] Where property is bequeathed to or for the benefit of certain objects as a specified person *may* appoint or for the benefit of certain objects in such proportions as a specified person *may* appoint, and the Will does not provide for the event of no appointment being made, if the power given by the Will is not exercised, the property belongs to all the objects of the power in equal shares

Implied gift to objects of power in default of appointment

Illustration

... ts that at her ... shall appoint ... will be divided

... *...ins* which runs ... such of certain ... ntment — If the ...

93 [Suc S 80] Where a bequest is made to the 'heirs', or "right heirs' "or relations' or 'nearest relations' or "family' or "kindred' or 'nearest of kin' or "next of kin" of a particular person without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property

Bequest to 'heirs,' etc, of particular person without qualifying terms

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Notes—Sec ... to each and every part of the Wi ... law, it is not ... expressed inten ... testator is not to be set aside because it cannot thke effect to the full extent, but is to work as far as it can *Thelluson* v *Woodford*, (1799) 4 Ves 325 In some cases a particular expression may be so construed as to give effect to general intention of the testator 9 B L R 377 If the whole plan cannot be carried out but that a part of it can, effect must be given to that part 6 A 56=11 I A 164, see also 20 B 571, 18 B 7, 9 C 952=10 I A 51, 16 C 388=16 I A 29, 24 C 589=1 C W N 345, 2 Ind Cas 311=5 M L T 103

The last of two inconsistent clauses prevails

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Illustrations

(i) The testator by the first clause of his Will leaves his estate of Ramnagar "to A" and by the last clause of his Will leaves it 'to B and not to A" B will have it

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... embodies the maxim *"cum duo inter se ... ratum est"* (Co Litt 112b,—Where ... shall ... (1809) 2 Taunt 109 at p 113 ... deed, and the last words in a ... not applicable to a Will execut... the Hindu Wills Act was not extended A I R 1926 Mad 492

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90 [Suc S 77] The description contained in a Will of property, the subject of gift, shall, unless a contrary intention appears by the Will, be deemed, to refer to and comprise the property answering that description at the death of the testator

Words describing subject refer to property answering description at testator's death

Notes—This section 'refers to the real and personal estate comprised in the Will, and nothing else It does not say that we are to construe whatever a man says in his Will as if it were made on the day of his death *In re Portland* (1885) 30 Ch D 50 A gift to grand daughter s husband, where the grand daughter is not married at the date of the Will but married at the death of the testator is a valid gift 17 C W N 39 Property which a testator does not possess at the time of the Will may also be validly bequeathed by a Will by virtue of this section 38 M 369 But under special circumstances a different construction is allowable 16 Ind Cas 553, 30 Ind Cas 915=17 Bom L R 705

91. [Suc S 78] Unless a contrary intention appears by the Will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power, and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power

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92 [Suc S 79] Where property is bequeathed to or for the benefit of certain objects as a specified person *may* appoint or for the benefit of certain objects in such proportions as a specified person *may* appoint, and the Will does not provide for the event of no appointment being made, if the power given by the Will is not exercised, the property belongs to all the objects of the power in equal shares

Implied gift to objects of power in default of appointment

Illustration

... id directs that at her ... as she shall appoint ... fund will be divided

Notes—This section is based upon the rule laid down by *Hawkins* which runs ...

93 [Suc S 80] Where a bequest is made to the "heirs', or "right heirs' "or relations' or 'nearest relations or "family or "kindred or "nearest of kin' or "next of kin" of a particular person without any qualifying terms and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property

Bequest to 'heirs," etc, of particular person without qualifying terms

Illustrations

(i) A leaves his property "to my own nearest relations" The property goes to those who would be entitled to it if A had died intestate leaving assets for the payment of his debts independently of such property

(ii) A bequeaths 10 000 rupees 'to B for his life and after the death of B, to my own right heirs' The legacy after B s death belongs to those who would be entitled to it if it had formed a part of A's unbequeathed property

(iii) A leaves his property to B, but if B dies before him, to B s next of kin, B dies before A, The property devolves as if it had belonged to B, and he had d ed intestate, leaving assets for the payment of his debts independently of such property

(iv) A leaves 10 000 rupees 'to B for his life, and after his decease to the heirs of C' The legacy goes as if it had belonged to C, and he had died intestate leaving assets for the payment of his debts independently of the legacy

Scope of the section—The Legislature in some respects following the [illegible] construction of gifts
[illegible] relationship or of
[illegible] haustive, and cases
[illegible] nides to construct on
[illegible] 7, *vide* also 7 Bom

94 [Suc S 81] *Where a bequest is made to the "representatives" or "legal representatives" or "personal representatives" or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it*

Bequest to 'representatives" etc, of particular person

Illustration

[illegible] A has died intestate and
[illegible] gacy, and will apply it
[illegible] may remain unpaid
[illegible] A s death would have
been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such person

Scope of the section — I should say, the conclusion to be drawn from the more modern, not unsupported by some of the earlier cases, is this that under a gift simply to representatives' legal representatives' 'personal representatives' and to executors and administrators the hand to receive money is that of the person
[illegible] person will in
[illegible] as part of the

95. [Suc S. 82] Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him

Bequest without words of limitation

Scope of the section.—If an estate be g ven to a man simply, without express words of inheritance or with words imperfectly describing an estate of inheritance it will pass the fee simple, or the entire interest of the testator, unless a contrary [illegible] 74 C 406
[illegible] s a
[illegible] is on
[illegible] and
[illegible] S,
[illegible] R
[illegible] would
[illegible] by it

putra poutradi krame would not curtail the estate The words have acquired a technical force and are used to convey an estate of inheritance 24 C 834; 7 W R 320, 7 C 304, 18 M 252, 4 C L R 77, 16 C W N 108, 20 C 649; 4 C 23, 24 W R 359, 29 A 217 19 A 16; 28 C W. N 541 (P C); 25 O C 345, 30 A 84 14 C W N 458, 66 Ind Cas 720, 8 C L J 20, 8 C L J 369, 12 C L J 391; 33 C 1306=11 C W N 12 A bequest of the profits of property in perpetuity vests the property itself in the legatee 10 O L J 339

96 [Suc S 83] Where property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, then, if a contrary intention does not appear by the Will, the legatee first named shall be entitled to the legacy if he is alive at the time when it takes effect, but if he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy

Bequest in alternative

Illustrations

(*i*) A bequest is made to A or to B A survives the testator B takes nothing

(*ii*) A bequest is made to A or to B A dies after the date of the Will, and before the testator The legacy goes to B

(*iii*) A bequest is made to A or to B A is dead at the date of the Will The legacy goes to B

(*iv*) Property is bequeathed to A or his heirs A survives the testator A takes the property absolutely

(*v*) Property is bequeathed to A or his nearest of kin A dies in the lifetime of the testator Upon the death of the testator the bequest to A s nearest of kin takes effect

ter his death to B or his heirs
Upon A s death the bequest

his death to B or his heirs
Upon A s death the bequest

Notes—This section which deals with alternative or substitutional bequest appears to contemplate a gift made in the first instance to a person and not to a class of persons It may be that the draftsman s intention was to assimilate the English law The illustrations of which there are seven, do not give a single example of a gift in the first instance to a class *Henderson s* T L L 179

97 [Suc S 84] Where property is bequeathed to a person and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will

Effect of words describing a class added to bequest to person

Illustrations

(*i*) A bequest is made—
to A and his children,
to A and his children by his present wife
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body
to A and the heirs female of his body,
to A and his issue,
to A and his family
to A and his descendants
to A and his representatives
to A and his personal representatives,
to A, his executors and administrators

In each of these cases A takes the whole interest which the testator had in the property

(*ii*) A bequest is made to A and his brothers A and his brothers are jointly entitled to the legacy

(*iii*) A bequest is made to A for life and after his death to his issue At the death of A the property belongs in equal shares to all persons who then answer the description of issue of A

Scope—This section is applicable to every kind of property, but it agrees generally with the la[illegible] n England as to personal [illegible] Ed p 106 A gift of personal property [illegible] him the property giv[illegible] given to certain legatees to be inherited by their children from one generation to another, it was held to be an absolute bequest in favour of the legatees by virtue of this section 1 M H C R 17, 15 M 448 Where a devise is made to daughter and her children it confers absolute estate 11 O L J 459=79 Ind Cas 1026

98 [Suc S 85] Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to class of persons under general description only

Notes—A gift to 'son's sons," "daughter's sons' and 'widow's sons' was held to denote a gift to a class 22 B 533 A gift to male offspring of daughter R in case of death of S without issue was held to be a gift to a class 12 M 393, 15 B 552, see also 12 C 663 A bequest 'to my grandchildren by my said late daughters E W also to my grandson T W M and to his step brother G W M in equal share', is not a gift to a class but a gift to them individually as *persona designatae* 15 M 448, see also 15 B 343, 20 B 57, see also 3 Bom. L R 785, 17 Bom L R 705=30 Ind Cas 985

Construction of terms

99 [Suc S 86] In a Will—

(*a*) the word "children applies only to lineal descendants in the first degree of the person whose "children" are spoken of,

(*a*) the word "grandchildren' applies only to lineal descendants in the second degree of the person whose 'grandchildren are spoken of,

(*c*) the words "nephews' and "nieces" apply only to children of brothers or sisters,

(*d*) the words ' cousins," or "first cousins," or "cousins german,' apply only to children of brothers or of sisters of the father or mother of the person whose 'cousins,' or "first cousins," or "cousins german," are spoken of,

(*e*) the words "first cousins once removed' apply only to children of cousins german, or to cousins german of a parent of the person whose ' first cousins once removed' are spoken of,

(*f*) the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of,

(*g*) the words "issue" and ' descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants' are spoken of,

(*h*) words expressive of collateral relationship apply alike to relatives of full and of half blood and,

(*i*) all words expressive of relationship apply to a child in the womb who is afterwards born alive

Notes—The word "children is ordinarily used to signify immediate descendants *Radcliffe* v. *Buckley* 10 Ves 195

100. [Suc S 87] In the absence of any intimation to the contrary in a Will, the word 'child,' the word "son," the word "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the Will, the reputation of being such relative

Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate

Illustrations

(i) A having three children, B, C and D, of whom B and C are legitimate and D

F were born, and acquired the reputation of being children of B Only C and D are objects of the bequest

(vi) A makes a bequest in favour of his child by a certain woman not his wife, B had acquired at the date of the Will the reputation of being the child of A by the woman designated B takes the legacy

(vii) A makes a bequest in favour of his child to be born of a woman who never becomes his wife The bequest is void

(viii) A makes a bequest in favour of the child of which a certain woman not married to him, is pregnant The bequest is valid

Notes—A gift to children means legitimate children, unless it appears from the context or from circumstances, that illegitimate children must have been included *Wilkinson* v *Adam*, I A & B 422 Where there is no legitimate relative it will include an illegitimate relative who has acquired the reputation of being the relative in question 30 B 600, see also 23 Ind Cas 348

Rules of construction where Will purports make two bequests to same person

101 [Suc S 88] Where a Will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first, if there is nothing in the Will to show what he intended, the following rules shall have effect in determining the construction to be put upon the Will —

(*a*) if the same specific thing is bequeathed twice to the same legatee in the same Will or in the Will and again in the codicil he is entitled to receive that specific thing only

(*b*) Where one and the same Will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything he shall be entitled to one such legacy only

(*c*) Where two legacies of unequal amount are given to the same person in the same Will or in the same codicil the legatee is entitled to both

...nount, are given to each by a different

Explanation—In clauses (*a*) to (*d*) of this section, the word "Will" does not include a codicil

Illustrations

...ial Bank of India, made his

..."I bequeath my ten shares

...ts, the Will concludes with

Bank of India to B" B is

Bank of India.

(*ii*) A bequest is made to A and his brothers A and his brothers are jointly entitled to the legacy

(*iii*) A bequest is made to A for life and after his death to his issue At the death of A the property belongs in equal shares to all persons who then answer the description of issue of A

Scope—This section is applicable to every kind of property, but it agrees generally with the law in England as to personality *Hend* 3rd Ed p 126 A gift of personal property of any kind to A, and the heirs of his body will simply vest in him the property given *Doncaster* v *Doncaster*, 3 Kay & J 26 Where a fund is given to certain legatees to be inherited by their children from one generation to another, it was held to be an absolute bequest in favour of the legatees by virtue of this section 1 M H C R 17, 15 M 448 Where a devise is made to daughter and her children it confers absolute estate 11 O L J 459=79 Ind Cas 1026

98 [Suc S 85] Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Bequest to class of persons under general description only

Notes—A gift to 'son's sons," "daughter's sons' and "widow's sons" was held to denote a gift to a class 22 B 533 A gift to male offspring of daughter R in case of death of S without issue was held to be a gift to a class 12 M 393, 15 B 552, see also 12 C 663 A bequest "to my grandchildren by my said late daughters E W also to my grandson T W M and to his step brother G W M in equal share", is not a gift to a class but a gift to them individually as *persona designatae* 15 M 448, see also 15 B 343, 20 B 57, see also 3 Bom. L R 785, 17 Bom L R 705=30 Ind Cas 985

Construction of terms

99 [Suc S 86] In a Will—

(*a*) the word "children' applies only to lineal descendants in the first degree of the person whose "children" are spoken of,

(*a*) the word "grandchildren" applies only to lineal descendants in the second degree of the person whose 'grandchildren are spoken of,

(*c*) the words "nephews" and "nieces" apply only to children of brothers or sisters,

(*d*) the words ' cousins," or "first cousins,' or "cousins german,' apply only to children of brothers or of sisters of the father or mother of the person whose 'cousins," or "first cousins," or "cousins german," are spoken of,

(*e*) the words "first cousins once removed' apply only to children of [illegible] a parent of the person whose ' first [illegible]

[illegible] ..pply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of,

(*g*) the words "issue" and ' descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of;

(*h*) words expressive of collateral relationship apply alike to relatives of full and of half blood and,

(*i*) all words expressive of relationship apply to a child in the womb who is afterwards born alive

Notes—The word "children' is ordinarily used to signify immediate descendants *Radcliffe* v *Buckley* 10 Ves 195

100. [Suc S 87] In the absence of any intimation to the contrary in a Will, the word 'child," the word "son," the word "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the Will, the reputation of being such relative

Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate

Illustrations

C are legitimate and D ong "my children" The ion of D
juired the reputation of a sum of money to his niece

(iii)

" B is dead and has left none but date of the Will acquired the reputa the gift

(v) A bequeaths a legacy to "the children of B," B never had any legitimate child C and D had, at the date of the Will acquire the reputation of being children of B After the date of the Will and before the death of the testator E and F were born, and acquired the reputation of being children of B Only C and D are objects of the bequest

(vi) A makes a bequest in favour of his child by a certain woman not his wife, B had acquired at the date of the Will the reputation of being the child of A by the woman designated B takes the legacy

his child to be born of a woman who never

the child of which a certain woman not it is valid

Notes—A gift to children means legitimate children, unless it appears from en must have been inclu is no legitimate relative, e reputation of being the

101 [Suc S 88] Where a Will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first, if there is nothing in the Will to show what he intended, the following rules shall have effect in determining the construction to be put upon the Will —

Rules of construction where Will purports make two bequests to same person

(*a*) if the same specific thing is bequeathed twice to the same legatee in the same Will or in the Will and again in the codicil he is entitled to receive that specific thing only

(*b*) Where one and the same Will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything he shall be entitled to one such legacy only

(*c*) Where two legacies of unequal amount are given to the same person in the same Will or in the same codicil the legatee is entitled to both

(*d*) Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a Will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies

Explanation—In clauses (*a*) to (*d*) of this section, the word "Will" does not include a codicil

Illustrations

(i) A, having ten shares, and no more, in the Imperial Bank of India, made his "I bequeath my ten shares is, the Will concludes with Bank of India to B" B is Bank of India

n him by B bequeaths to C
s made a codicil to his Will
to C the diamond ring which
he diamond ring which was
given to A by B

(ii) A by his Will, bequeaths to B the sum of 5,000 rupees and afterwards in the same Will repeats the bequest in the same words B is entitled to one legacy of 5 000 rupees only

(iv) A by his Will bequeaths to B the sum of 5 000 rupees and afterwards in the same Will bequeaths to B the sum of 6,000 rupees B is entitled to receive 11,000 rupees

(v) A, by his Will, bequeaths to B 5 000 rupees and by a codicil to the Will he bequeaths to him 5 000 rupees B is entitled to receive 10,000 rupees

(vi) A, by one codicil to his Will, bequeaths to B 5,000 rupees and by another codicil bequea hs to him 6 000 rupees B is entitled to receive 11,000 rupees

(vii) A by his Will, bequeaths '500 rupees to B because she was my nurse, and in another part of the Will bequeaths 500 rupees to B 'because she went to England with my children B is entitled to receive 1,000 rupees

(viii) A, by his Will, bequeaths to B the sum of 5,000 rupees and also in another *part of the Will, an annuity of 400 rupees B is entitled to both legacies*

(ix) A by his Will bequeaths to B the sum of 5,000 rupees and also bequeaths to him the sum of 5 000 rupees if he shall attain the age of 18 B is entitled absolutely to one sum of 5 000 rupees, and takes a contingent interest in another sum of 5 000 rupees

Scope of the section —It often happens that two legacies are given to the same legatee by the same or different testamentary instruments and questions accordingly arise whether the second bequest should be construed as merely a repetition and intended by the testator only in substitution of the legacy first given, or whether it should be considered as accumulative and intended as an additional profit to the legatee *Rop Leg Vol II p I*

102 [Suc S 89.] A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property

Constitution of residuary *legatee*

Illustrations

(i) A makes her Will consisting of several testamentary papers, in one of which are contained the following words —"I think there will be something left, after all funeral expenses etc, to give to B now at school, towards equipping him to any profession he may hereafter be appointed to" B is constituted residuary legatee

the end of —"I believe

(iii) A bequeaths all his property to B except certain stocks and funds, which he bequeaths to C B is the residuary legatee

Notes expression is necessary to constitute a residuary
testator be plainly expressed in the
nt of debts and legacies shall be taken
Joe & W 399, *Hearne* v *Wigginton*
words should there be any surplus
ry bequest 4 C 443, 5 C 438—61
A 182, 4 Bom L R 555

103. [Suc S 90] Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect

Property to which residuary legatee entitled

Illustration

A, by his [illegible]
and another la
property to B.
him at the tim
part of the residue

Notes—This section expressly provides that a residuary legatee is entitled to all the property belonging to the testator at the time of his death of which he has not made any testamentary dispos [illegible]
t
p
f
t
v
25 I A 126 The term "all the property" includes movable as well as immovable property. 22 W R 174; 4 C 443 But it does not include property unknown to the testator 38 M 1096

104 [Suc S 91] If a legacy is given in general terms without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives

Time of vesting legacy in general terms

Notes—A bequest, unless the testator intend otherwise as in the case of contingent bequest, becomes vested in interest in the devisee or legatee from the date of the testator's death although he may not be entitled to receive what has been bequeathed to him except in the course of administration, such an interest is attachable and saleable before an administrator has distributed the estate in due course of administration This is clear from the provisions of this section as well as from sections 119 and 120 of the Act 22 M L J 228=13 Ind Cas 795, 9 Ind Cas 951=13 Bom L R 141 Until the assent of the executor is given the legatee has only an inchoate right to the legacy The vesting of the estate referred to in this section does not become full or absolute until that assent is given 25 M L J 556=38 M 474 A property vests even where life estate intervenes or actual possession and enjoyment is postponed 11 Ind Cas 516=33 A 558, 15 C W N 393; 4 M I A 137, 51 Ind Cas 481=23 C W N 419 P C

105 [Suc S. 92.] (1) If the legatee does not survive the testator the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the Will that the testor intended that it should go to some other person.

In what case legacy lapses

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator

Illustrations

(i) The testator bequeaths to B 500 rupees which B owes me B dies before the testator, the legacy lapses

(ii) A bequest is made to A and his children A dies before the testator, or happens to be dead when the Will is made The legacy to A and his children lapses

(iii) A legacy is given to A, and, in case of his dying before the testator, to B A dies before the testator The legacy goes to B

(iv) A sum of money is bequeathed to A for life, and after his death to B A dies in the lifetime of the testator, B survives the testator The bequest to B takes effect

[illegible]

(vi) The testator and the legatee perished in the same ship-wreck There is no evidence to show which died first The legacy lapses.

Notes—A lapsed legacy forms part of the residue of the testator's estate If there be a residuary legatee, he is entitled to that residue, and where there is no residuary legatee, the heirs of the testator will be entitled to the lapsed legacy 4 B 537 ; 50 Ind Cas 249=21 O C 374

Legacy does not lapse if one of two joint legatees die before testator

106 [Suc. S 93] If a legacy is given to two persons jointly, and one of them dies before the testator, the other legatee takes the whole.

Illustration

The legacy is simply to A and B A dies before the testator B takes the legacy

Notes—In this section the word "two' is used But this section is applicable to the case of a bequest to any number of persons jointly *Morley* v *Bird*, 3 Ves 628 The rule applies to a gift to a class though interests of the members vest at different times 34 M 80 A joint tenancy is created where a gift is to nephews 9 B 491, see also 24 C 646, 15 B 443, 23 B 80, 43 A 600

Effect of words showing testator's intention to give distinct shares

107 [Suc S 94] If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property

Illustration

A sum of money is bequeathed to A, B and C to be equally divided among them A dies before the testator B and C will only take so much as they would have had if A had survived the testator

Notes—This section anc ... section lays down generally ... they get it as tenants in coi ... before the testator, his share ... No question of survivorship ... (1916) M W N 190=33 Ind Cas 988

... joint tenancy is ... the members of ... presumption is ... 73, 5 Bom O

When lapsed share goes as undisposed of

108 [Suc S. 92] Where a share which lapses is a part of general residue bequeathed by the Will, that share shall go as undisposed of.

Illustration

The testator bequeaths the residue of his estate to A B and C to be equally divided between them A dies before the testator. His one third of the residue goes as undisposed of

Notes—Where a testator names a residuary legatee, he will be entitled in general not only to what remains ... but also to whatever may by any casualty ha ... and making of the Will *Bird* v *Le* ... if a part of the general residuary beq ... lapse? This section lays down th ... as undisposed See also 4 M 244

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime

109 [Suc. S 96]. Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of his survives the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediatley after the the death of testator, unless a contrary intention appears by the Will

Illustration

A makes his Will, by which he bequeaths a sum of money to his son B, for his own absolute use and benefit B dies before A leaving a son, C, who survives A, and having made his Will whereby he bequeaths all his property to his widow D The money goes to D

Notes—This section does not substitute the surviving lineal decendants for the original child or other descendants A gift to the latter takes effect, even where he dies in the testator's lifetime in the same manner as if his death had happened immediately after that of the testator *Jarman on Wills*, 6th Ed 450, see also 16 C 549; 9 B L R 377

Bequest to A for benefit of B does not lapse by A's death

110 [Suc S 97] Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator s life time, of the person to whom the bequest is made

Notes—A devised his land to B his creditor on condition that B should release his debt and A also declared that the residue would not be liable for the debt B died in the lifetime of A *Held* that the land was charged with the debt *In re Kirk*, 21 Ch D 431

Survivorship in case of bequest to described class

111 [Suc. S 98] Where a bequest is made simply to a described class of persons the thing bequeathed shall go only to such as are alive at the testator's death

Exception—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specifi d individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator

Illustrations

[illegible] children of B without saying when it is [illegible] previous to the date of the Will, leaving [illegible] e date of the Will but before the death [illegible] ll belong to C and D to the exclusion [illegible]

[illegible] -queathed to A for his life, and after his [illegible] of the testator, B had two children living, C and D, and he never had any other child Afterwards, during the lifetime of [illegible] D and E are jointly entitled [illegible]

[illegible] life, and after her decease [illegible] d two children living, C and D and after that event, two children E and F, were born to B C and E died in the lifetime of A, C having made a Will, E having made no Will A has died, leaving D and F surviving her The legacy is to be divided into four equal parts, one of [illegible] o D, one to the administrator of E [illegible]

[illegible] B for his life, and after his decease to [illegible] B had two sisters living, C and D, and after that event another sister E was born C died during the life of B D and F have survived B One third of A's lands belongs to D, E and the representatives of C in equal shares

(*vi*) The testator and the legatee perished in the same ship wreck There is no evidence to show which died first The legacy lapses

Notes—A lapsed legacy forms part of the residue of the testator's estate If there be a residuary legatee, he is entitled to that residue and where there is no residuary legatee, the heirs of the testator will be entitled to the lapsed legacy 4 B 537, 50 Ind Cas 249=21 O C 374

Legacy does not lapse if one of two joint legatees die before testator

106 [Suc S 93] If a legacy is given to two persons jointly, and one of them dies before the testator, the other legatee takes the whole

Illustration

The legacy is simply to A and B A dies before the testator B takes the legacy

Notes—In this section the word 'two' is used But this section is applicable to the case of a bequest to any number of persons jointly *Morley* v *Bird* 3 Ves 628 The rule applies to a gift to a class though interests of the members vest at different times 34 M 80 A joint tenancy is created where a gift is to nephews 9 B 491, see also 24 C 646, 15 B 443, 23 B 80 43 A 600

Effect of words showing testator's intention to give distinct shares

107 [Suc S 94] If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it then if any legatee dies before the testator so much of the legacy as was intended for him shall fall into the residue of the testator s property

Illustration

A sum of money is bequeathed to A B and C to be equally divided among them A dies before the testator B and C will only take so much as they would have had if A had survived the testator

Notes—This sect on anc [illegible] Th s section lays down generally [illegible] they get it as tenants in co [illegible] before the testator, his share [illegible] No question of survivorship arises where the devisees are tenants in common (1916) M W N 190=33 Ind Cas 988

[illegible] joint tenancy [illegible] the members of [illegible] presumption [illegible] 73, 5 Bom. O C 128, 33 A 41 82 Ind Cas 1044, 79 Ind Cas 86=1925 Lah 59

When lapsed share goes as undisposed of

108 [Suc S 92] Where a share which lapses is a part of general residue bequeathed by the Will, that share shall go as undisposed of

Illustration

The testator bequeaths the residue of his estate to A B and C to be equally divided between them A dies before the testator His one third of the residue goes as undisposed of

Notes—Where a testator names a residuary legatee he will be entitled in general not only to what remains after payment of debts and legacies but also to whatever may by any casualty happen to fall into the residue after the date and making of the Will *Bird* v *Le Lebre* 15 Ves 589 Now the question is if a part of the general residuary bequest lapse what would be the effect of such a lapse? This section lays down that such undisposed part of residue shall go as undisposed See also 4 M 244

109 [Suc. S 96]. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime — Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of his survives the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediatley after the the death of testator, unless a contrary intention appears by the Will

Illustration

A makes his Will, by which he bequeaths a sum of money to his son B, for his own absolute use and benefit B dies before A leaving a son, C, who survives A, and having made his Will whereby he bequeaths all his property to his widow D The money goes to D

Notes—This section does not substitute the surviving lineal decendants for the original child or other descendants A gift to the latter takes effect, even where he dies in the testator s lifetime in the same manner as if his death had happened immediately after that of the testator *Jarman on Wills*, 6th Ed 450, see also 16 C 549; 9 B L R 377

110. [Suc S 97] Bequest to A for benefit of B does not lapse by A's death — Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator s life time, of the person to whom the bequest is made

Notes—A devised his land to B his creditor on condition that B should release his debt and A also declared that the residue would not be liable for the debt B died in the lifetime of A *Held* that the land was charged with the debt *In re Kirk*, 21 Ch D 431.

111 [Suc S 98] Survivorship in case of bequest to described class — Where a bequest is made simply to a described class of persons the thing bequeathed shall go only to such as are alive at the testator's death

Exception—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specifi d individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator

Illustrations

(i) A bequeaths 1 000 rupees to "the children of B" without saying when it is to be distributed among them B had died previous to the date of the Will, leaving three children C, D and E E died after the date of the Will but before the death of A C and D survive A The legacy will belong to C and D to the exclusion of [illegible]

[illegible] fter his [illegible] living, [illegible] time of [illegible] entitled [illegible]

(iii) A sum of money was bequeathed to A for her life, and after her decease to [illegible] or, B had two children living, C and D [illegible] vere born to B C and E died in the life [illegible] made no Will A has died, leaving D [illegible] divided into four equal parts, one of [illegible] D, one to the administrator of E [illegible]

[illegible] B for his life, and after his decease to [illegible] B had two sisters living, C and D, and after that event another sister E was born C died during the life of B D and F have survived B One third of A's lands belongs to D E and the representatives of C in equal shares

(*v*) A bequeaths 1,000 rupees to B for life and after his death equally among the children of C Up to the death of B, C had not had any child The bequest after the death of B is void

the children born or to be born" of B C At the death of the testator B has death of the testator, but in the lifetime n to B After the death of C, another D, E, F and G, to the exclusion of the

children of B, to be divided among them when t the testator's death, B had one child living, other children, named D and E E died, but ned majority The fund belongs to C and D exclusion of any child who may be born to B after C's attaining majority

Notes—Where there is a gift to a number of persons who are united or connected by some common tie and you can see that the testator was looking to that body as a whole rather than to the members constituting the body of individuals so you can see that he intended that if one or more of that body died in his lifetime the survivors should take the gift between them, there is nothing to prevent your giving effect to the wishes of the testator (1901) A C at p 191, see also 22 B 533, 15 B 652, 18 B 7, 20 B 571, 16 C ,7 P C

CHAPTER VII

Of Void Bequests

112 [Suc S 99] Where a bequest is made to a person by a particular description and there is no person in existence at the testators death who answers the description, the bequest is void.

Bequest to person by particular description, who is not in existence at testator's death

Exception—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he is dead, to his representatives

Illustrations

(*i*) A bequeaths 1,000 rupees to the eldest son of B At the death of the testator B has no son The bequest Is void

(*ii*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C At the death of the testator, C had no son Afterwards, during the life of B, a son is born to C Upon B's death the legacy goes to C's son

(*iii*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C At the death of the testator, C had no son Afterwards, during the life of B, a son named D, is born to C D dies, then B dies The legacy goes to the representative of D

(*iv*) A bequeathes his estate of Green Acre to B for life, and at his decease to the eldest son of C Up to the death of B C has had no son. The bequest to C's eldest son is void

(*v*) A bequeathes 1,000 rupees to the eldest son of C to be paid to him after the death of B At the death of the testator C has no son, but a son is afterwards born to him during the life of B and is alive at B's death C's son is entitled to the 1,000 rupees

Scope of the section—"This section deals with bequest to persons not in existence at the testator's death and lays down that such bequests are absolutely void Where a gift is made to a person by a particular description this section requires, not only that they must have been in existence at the testator's death, but must also answer the description at the testator's death

15 C W N 945=14 C L J 20 Th s section if stood alone would ab solutely and without restriction empo ver a testator to give property to unborn persons stand ng ... l these persons come ... t sections 113 and 114 ... 8 C 157, 8 C 637 ... nd Cas 865=12 Pat, 708=A I R 1933 Pat 617

113 [Suc S 100] Where a bequest is made to a person not in existence at the time of the testator s death, subject to a prior bequest contained in the Will, the later bequest shall be void, unless it comprises the whole of the rema ning interest of the testator in the thing bequeathed

Bequest to person not in existence at testator s death, subject to prior bequest

Illustrations

(i) Property is bequeathed to A for his life and after his death to his eldest son for life, and after the death of the latter to his eldest son At the time of the testator s death A has no son Here the bequest to A s eldest son is a bequest to a person not in existence at the testator s death It is not a bequest of the whole interest that remains to the testator The bequest to A s eldest son for his life is void

(ii) A fund is bequeathed to A for his l fe and after his death to his daughters A ... at the testator ... A had ... h s some of hom were not in existence at ... comprises the whole interest ... The bequest to A s daughters ...

(iii) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that if any of them marries under the age of eighteen her portion shall be settled so that it may belong to herself for life and may be divisible among her children after her death A has no daughterrs living at the time of the testator s death but has daughters born afterwards who survive him Here the d rection for settlement has the effect, in the case of each daughter who marries under eighteen of substituting for the absolute bequest to her a bequest to her merely for her life *that is to say, a bequest to a person not in existence at the time of the testator s death* of something which is less than the whole interest that remains to the testator in the thing bequeathed The direction to set le the fund is void

...

the fund, that is to say, of something which is less than the whole interest that remains to the testators in the thing bequeathed The d rection to settle the fund *upon the daughters of B is void*

Notes—By this section a gift to an unborn person subject to a prior bequest is void, unless it be an absol ite gift of the whole remaining interest of the testator 8 C 157, see also 28 C W N 757

114 [Suc S 101] No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator s death and the minority of some person who shall be in existence at the expira tion of that period, and to whom, if he attains full age the thing bequeathed is to belong

Rule against perpetuity

Illustrations

... his death to B for his l fe, ... attain the age of 25 A and ... t attain the age of 25 may ... may not atta n 25 unt l more than 18 years have elapsed from the death of the longer liver of A and B and the

vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B The bequest a fter B s death is void

(ii) A fund is bequeathed to A f r his life, and after his death to B for h s life, and after B s death to such of B s sons as shall first attain the age of 25 B dies in the l fe ... ase the sons of B are ... when either of them ... quest is valid

(iii) A fund is bequeathed to A for his life and after his death to B for his l fe with a direction that after B s death it shall be divided amongst such of B s children as shall attain the age of 18 but that, if no child of B shall attain that age the fund shall go to C Here the time for the division of the fun l must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator s decease All the bequests are valid

(iv) A fund is bequeathed to trustees for the benefit of the testator's daughters, ...

Notes—This section lays down a special rule and it differs from the Engl sh Law on the subject 23 C W N 826=53 Ind Cas 779 This section in general terms invalidates any bequest which delays the vesting beyond a life or lives in be ing and the minority of the donee who must be living at the close of the last life 8 C 152 The rule laid down ir ... able properties 20 B 511, 15 ... ble bequests 47 Ind Cas 38 ... C W N 829, 47 Ind Cas 383 ...

115 [Suc S 102] *Bequest to a class some of whom may come under rule in sections 113 and 114* If a bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the provisions of section 113 or section 114, such bequest shall be "void in regard to those persons only and not in regard to the whole class *

Illustrations

(i) A fund is bequeathed to A for life and after his death to all his children who shall attain the age of 25 A survives the testator and has some children living at the testator's death Each child of A s living at the testator s death must attain the age of 25 (if at all) within the limits allowed for a bequest But A may have children after the testator s decease some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A The bequest to A's children therefore, is inoperative as to any child born after the testator's death "and in regard to those who do not attain the age of 25 within 18 years after A s death but is operative in regard to the other children of A *

(ii) A fund is bequeathed to A for his life and after his death to B, C, D and all other children of A who shall attain the age of 25 B, C, and D are children of A l ... the same as that ... does not prevent ... wholly void It is ... ns the ages of 25 within 18 years after A s death "*

Notes - This section adopts the rule in *Leake* v *Robinson*, 2 Mer 363 but ... by s 114 or to ... ection lays down ... olly vo d, not in ... ined in ss 113 ... he amendment ... r 363, has been

*Substituted by Act XXI of 1929

made to give effect to particular indications of a contrary intention *Bree* v *Perfect*, 1 Coll 128, 29 B 133 (135)=6 Bom L R 601. The rule laid down in *Leake* v *Robinson* was followed in the case of Hindus in several earlier cases, *vide*, 8 B L R 400; 2 C 212, 4 C 455=2 C L R 315, 5 C L R. 496; 8 B L R 208.

Bequest to take effect on failure of prior bequest

*116 Where by reason of any of rules contained in sections 113 and 114, any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same Will and intended to take effect after or upon failure of such prior bequest is also void.

Illustrations

(i) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son to B A and B survive the testator The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest [illegible]

[illegible] after his death to such of his [illegible] of A shall attain that age to B [illegible] intended to take effect upon [illegible] t attain the age of 25 which be [illegible] void

Notes —Where an interest fails by reason of any of the rules contained in the [illegible]

[illegible] not taking effect 10 C. 482 P C

Effect of direction for accumulation

*117 (1) Where the terms of a Will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period of eighteen years the property [illegible] as if the period during which the [illegible] had elapsed [illegible]

[illegible] irection for accumulation for the purpose of—

(1) the payment of the debts of the testator or any other person taking any interest under the Will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the Will, or

(iii) the preservation or maintenance of any property bequeathed, and such direction may be made accordingly,

Bequest to religious or charitable uses

118 [Suc S 105]. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons

Illustrations

A having a nephew makes a bequest by a Will not executed and deposited as required—

* Substituted by Act 21 of 1929

for the relief of poor people ,
for the maintenance of sick soldiers ,
for the erection or support of a hospital ,
for the education and preferment of orphans ,
for the support of scholars ,
for the erection or support of a school
for the building and repairs of a bridge ,
for the making of roads ,
for the erection or support of a church ,
for the repairs of a church ,
for the benefit of ministers of religion ,
for the formation or support of a public garden ,

All these bequests are void

Notes —The terms "any nearer relative includes father, mother, son daughter ... and son grand daughter, brother or sister The ... relative The term has no application to any ... 600 , 26 M 532 It includes an adopted son ... 455 This section has no application to the Hindus as such a bequest made by a Hindu for charitable and religious purposes is not governed by this section Such a bequest may be void under s 89 but cannot be void under this section 17 C W N 39 , 12 C L J 391 , 32 C 166 , 30 A 111, 4 C 443

CHAPTER VIII

OF THE VESTING OF LEGACIES

Date of vesting of legacy when payment or possession postponed

119 [Suc S 106] Whereby the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed a right to receive it at the proper time shall, *unless a contrary intention appears* by the Will, become vested in the legatee on the testator s death and shall pass to the legatee s representatives if he dies before that time and without having received the legacy, and in such cases the legacy *is from the testator s death* said to be vested in interest

Explanation—An intention that a legacy to any person shall not become ... inferred merely from a provision whereby ... ng bequeathed is postponed, or whereby a ... *to some other person, or whereby the income* ... directed to be accumulated until the time of paymen arrives, or from a provision that, if a particular event shall happen the legacy shall go over to another person

Illustrations

... at the death of C On A s ... he dies before C his repres

... s attaining the age

... o B On the tes

... 18 and then to B

... *pay certain debts* ... A s death the g ft

to C becomes veste l in interest ...

(vi) A fund is bequeathed to A B and C, in equal shares to be paid to them ... proviso that if all of them d e ... *D On the death of the testator* ... t to be divested in case A, B and ... of them (except the last surv vor) ... subject, to his representatives

Notes —Whether there is any contrary intention or not is a question of construction *In re Jobron*, 44 Ch D 154, 8 C 378=10 C L R 207, 4 M 124 No particular word is necessary 28 C 621=5 C W. N 729 A vested interest is heritable, divisible and transferable. 5 C 59; 9 M I A 323, see also 24 B 420

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idual
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pone the vesting 9 C W N 1033, 4 C 364

Date of vesting when legacy contingent upon specified uncertain event

120 [Suc S 107] (1) A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens

(2) A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible

(3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent

Exception —Where a fund is bequeathed to any person upon his attaining a particular age, and the Will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent

Illustrations

(*i*) A legacy is bequeathed to D in case A B and C shall all die under the age of 18 D has a contingent interest in the legacy until A, B and C all die under 18, or one of them attains that age

(*iii*) An estate is bequeathed to A for life and after his death to B, if B shall then be living; but if B shall not be then living to C A, B and C survive the testator B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other has happened

(*iv*) An estate is bequeathed as in the case last supposed B dies in the lifetime of A and C Upon the death of B, C acquires a vested right to obtain possession of the estate upon A s death

(*v*) A legacy is bequeathed to A when she shall attain the age of 18 or shall marry under that age with the consent of B, with a proviso that if she neither *attains 18 nor marries under that age with B s consent, the legacy shall go to C* A and C each take a contingent interest in the legacy A attains the age of 18 A becomes absolutely entitled to the legacy although she may have married under 18 without the consent of B

(*vi*) An estate is bequeathed to A until he shall marry and after that event to B B's interest in the bequest is contingent until the condition is fulfilled by A's marrying

(*vii*) An estate is bequeathed to A until he shall take advantage of any law for

of Sultanpur Buzurg to C B s interest in the bequest is contingent until he has conveyed the latter farm to C

(*x*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death A's interest in the legacy is contingent until the condition is fulfilled by the axpiration of the five years without B's having married C or by the occurrence within that period of an event which makes the fulfilment of the condition impossible

(*xi*) A fund is bequeathed to A if B shall not make any provision for him by Will The legacy is contingent until B's death

(*xii*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age The legacy is vested

(*xiii*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum out of another fund, shall be applied for his maintenance until he arrives at that age The legacy is contingent

Notes—A Hindu testator bequeathed in the following terms "I hereby authorise my wife to adopt a son In case of death of an adopted son, my wife shall adopt one after another five sons in succession If my said wife dies without adopting a son or if such son predeceases her without leaving any male issue, my estate after the death of the said wife shall pass to the sons of my sister who may be [illegible] at the time of my death" Held that the gift to the sister's son was a contingent [illegible] 41 C 642, see also 82 Ind Cas 1044, 29 C W N 629

Vesting of interest in bequest to such members of a class as shall have attained particular age

121 [Suc S 108.] Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy

Illustration

[illegible]

Notes—"Where the words of contingency form part of the description of the class of persons to take, and where as in this case the gift is to those who shall attain the age of twenty one the words must receive their natural construction, and no estate vests in any one till one attains the prescribed age 7 C 218

CHAPTER IX

OF ONEROUS BEQUESTS.

Onerous bequests

122. [Suc S 109] Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully

Illustration

A, having shares in (X) a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint-stock companies; B refuses to accept the shares in (Y) He forfeits the shares in (X)

Notes—The rule contained in this section is based upon the equitable doctrine of election *Wallaston* v *King*, L R Eq 165

One of two separate and independent bequests to same person may be accepted, and other refused

123 [Suc S 110] Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money B refuses to accept the lease He will not by this refusal forfeit the money

Scope—Where the gif
to reject the onerous withc
Walrood, 22 Ch D 573 ,
it does not matter that it
1 Ch 347 But where the
Britten, 42 L J Ch 187 ,

CHAPTER X

Of Contingent Bequests.

Bequest contingent upon specified uncertain event no time being mentioned for its occurrence

124 [Suc S. 111] Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable

Illustrations

(*i*) A legacy is bequeathed to A, and, in case of his death to B If A survives the testator the legacy to B does not take effect

(*ii*) A legacy is bequeathed to A, and in case of his death without children, to B If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect

(*iii*) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death to B A attains the age of 18 The legacy to B does not take effect

(*iv*) A legacy is bequeathed to A for life, and, after his death to B, and "in case of B's death without children," to C The words "in case of B's death without children" are to be understood as meaning in case B dies without children during the lifetime of A

(*v*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death" to C The words "in case of B's death" are to be considered as meaning "in case B dies in the lifetime of A"

Scope of the section—
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p 303 But in 23
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heirs were not
testator This section
effect to the intention

(*x*) A fund is bequeathed to A ... after the testator's death A's interest in ... ndition is fulfilled by the expiration of the ... by the occurrence within that period of ... he condition impossible

(*xi*) A fund is bequeathed to A if B shall not make any provision for him by Will The legacy is contingent until B's death

(*xii*) A bequeaths to B 500 rupees a year upon his attaining the age of 18 and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age The legacy is vested

(*xiii*) A bequeaths to B 500 rupees when he shall attain the age of 18 and directs that a certain sum out of another fund shall be applied for his maintenance until he arrives at that age The legacy is contingent

Notes—A Hindu testator bequeathed in the following terms "I hereby authorise my wife to adopt a son In case of death of an adopted son, my wife shall adopt one after another ... sons ... reversion If my said wife dies without adopting a ... without leaving any male issue, my estate after ... to the sons of my sister who may be l... ng at the time of my death ... Held that the gift to the sister's son was a contin... at one 41 C 642, see also 82 Ind Cas 1044, 29 C W N 629

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121 [Suc S 108.] Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy

Illustration

A fund is bequeath... with a direction that, ... of the share, to which ... applied for his mainten... 18 has a vested interest in the bequest

Notes—"Where the words of contingency form part of the description of the class of persons to take, and where as in this case the gift is to those who shall attain the age of twenty one" the words must receive their natural construction, and no estate vests in any one till one attains the prescribed age 7 C 218

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OF ONEROUS BEQUESTS.

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Illustration

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Illustration

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money B refuses to accept the lease He will not by this refusal forfeit the money

Scope —Where the gif[illegible]
to reject the onerous withc[illegible]
Walrood, 22 Ch D. 573, [illegible]
it does not matter that it [illegible]
1 Ch 347 But where the [illegible]
Britten, 42 L J Ch 187, [illegible]

CHAPTER X

Of Contingent Bequests

Bequest contingent upon specified uncertain event no time being mentioned for its occurrence

124 [Suc S. 111] Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable

Illustrations

(*i*) A legacy is bequeathed to A, and, in case of his death to B If A survives the testator the legacy to B does not take effect

(*ii*) A legacy is bequeathed to A, and in case of his death without children, to B If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect

(*iii*) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death to B A attains the age of 18 The legacy to B does not take effect

(*iv*) A legacy is bequeathed to A for life, and, after his death to B, and "in case of B's death without children, to C The words "in case of B's death without children" are to be understood as meaning in case B dies without children during the lifetime of A

(*v*) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death" to C The words "in case of B's death" are to be considered as meaning "in case B dies in the lifetime of A"

[illegible]

of death will be considered to mean not death at any time, but death before a particular period *e g* the period of distribution and not of remainder *Hawk*, 3rd Ed p 303 But in 23 C W N 1038=54 Ind Cas 807, where the testator had a daughter A by his first wife and to whom he had bequeathed an annuity which in the event of her death was to go to her heirs it was held that this section did not apply, and A's [illegible] by reason of A's surviving the [illegible] of construction for giving [illegible] and fast rule regulating the [illegible] must be applied whenever it [illegible] testator The language of [illegible] e section 3 C W N 478 [illegible] proviso "unless a contrary [illegible] 18 This section applies to Hindu Wills and the rule laid down in the section is an absolute rule of construction.

Vide, 19 C W N 52=27 Ind Cas 239, 44 C 481=39 Ind Cas 228, 19 C W N 426=42 I A 71 This section applies where the prior bequest is capable of taking effect and is not void *ab initio* 33 C 947 It is applicable to all descriptions of property 23 C 563 This section is applicable only where no time is mentioned for the occurrence of the event 5 C 59, 18 M 347=7 C 304=8 I A 46, 45 B 1038, 21 C W N 854, 27 Bom L R 380, 38 C 327, 33 C 1306, 19 C W N 439 =23 Ind Cas 597 This section should be applied only to cases coming strictly within its scope 20 C W N 169=43 C 402

Bequest to such of certain persons as shall be surviving at some period not specified

125. [Suc. S 112] Where a bequest is made to such of certain persons as shall be surviving at some period but the exact period is not specified, the legacy shall go to such of them as are alive at the time of payment or distribution, unless a contrary intention appears by the Will

Illustrations

(*i*) Property is bequeathed to A and B to be equally divided between them, or to the survivor of them If both A and B survive the testator the legacy is equally divided between them If A dies before the testator and B survives the testator, it goes to B

(*ii*) Property is bequeathed to A for life, and, after his death, to B and C to be equally divided between them, or to the survivor of them B dies during the life of A, *C survives A At A's death the legacy goes to C*

(*iii*) *Property* is bequeathed to A for life, and after his death to B and C, or the ... or with the direction that if B should not survive the testator, his children are ... of the testator B survives the testator ... ve of B ... to B and C, with a ... e whole shall go to the survivor ... *in the lifetime of A* *The legacy goes to the representative of C*

Notes—The term 'surviving at some period' means surviving at the period of payment *Re Hopkin's Trust*, 2 H & M at p 414, *Stevenson v Gallan*, 18 Beav 590

CHAPTER XI

OF CONDITIONAL BEQUESTS

Bequest upon impossible condition

126 [Suc S 113] *A bequest upon an impossible condition is void*

Illustrations

(*i*) *An estate is bequeathed to A on condition that he shall walk 100 miles in an hour The bequest is void*

(*ii*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter A's daughter was dead at the date of the Will The bequest is void

Notes—The condition referred to in this section is condition precedent

Bequest upon illegal or immoral condition

127 [Suc S 114] *A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void*

Illustrations

(*i*) A bequeaths 500 rupees *to B on condition that he shall murder C.* The bequest is void

(*ii*) A bequeaths 5000 rupees to his niece if she will desert her husband The bequest is void

Notes.—A bequest under the Will of a Hindu made conditional on the continuance, in furture, of the past immoral relations between the legatee and testator is

principle of the English Law renders the bequest void 23 113 (P C)=11 I A 44 Past , 2 A 433 , 1 A 487

128 [Suc S 115] Where a Will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with

Fulfilment of condition precedent to vesting of legacy

Illustrations

(*i*) A legacy is be ... con sent of B, C, D and E ... the marriage D sends a ... nally informed by A of his ... l the condition

(*ii*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D D dies A marries with the consent of B and C A has fulfilled the condition

(*iii*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D A marries in the lifetime of B, C and D with the consent of B and C only A has not fulfilled the condition

(*iv*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D A obtains the unconditional assent of B C and D to his marriage with E Afterwards B C and D capriciously retract their consent A marries E A has fulfilled the condition

(*v*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D A marries without the consent of B, C and D, but obtains ... ondition

... money to B, if B shall ... g the lifetime of A, and ... A dies The bequest to B

(*vii*) A legacy is bequeathed to A if he executes a certain document within a time specified in the Will The document is excuted by A within a reasonable time, but not within the time specified in the Will A has not performed the condition, and is not entitled to receive the legacy

Scope of the section —Where a condition is precedent it ought regularly to be strictly performed in the manner required Yet it seems that both by the civil ... n execution ... aw held, in ... trict perfor ... tain period, ... be insuffi

129 [Suc S 116] Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail the second bequest shall take effect upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator

Bequest to A and on failure of prior bequest to B

Illustrations

(*i*) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B A dies without having ever had a child The bequest to B takes effect

(*ii*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A s death, and, if he should neglect to do so to C B dies in the testator's lifetime The bequest to C takes effect

Scope —' The principle well established by *Jones v West* (1711) 1 E q Ca Ab 245 , *Statham v Bell*, (1774) Cowp 40 , *Medows v Parry*, (1817) 1 V & B 313 , *Murray v Jones*, (1813) 2 V & B 313 , *Mackinon v Sewel*, (1831) 5 Sim 78 , *Atelyn*

v *Ward*, (1749-50) 1 Ves Sr 420, has been codified in India in this section " 3 C L J 502=19 C W N 695=33 C 947, see also 19 C W N 439; 15 C 282

130 [Suc. S 117] Where the Will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner

When second bequest not to take effect on failure of first

Illustration

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her A and his wife perish together, under circumstances which make it impossible to prove that she died before him, the bequest to B does not take effect

... Where the ... event of ... take effe... based upo... ndary inte... n the absence of express words of necessary implication restricting the operation of the intention to benefit the second legatee the Court ought to put a construction on the Will which will fulfil that intention 33 C 947

131 [Suc S 118] (1) A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed *shall go to another person, or that in case* a specified uncertain event shall not happen, the thing bequeathed shall go over to another person

Bequest over conditional upon happening or not happening of specified uncertain event

(2) In each case the ulterior bequest is subject to the rules contained in sections 120, 121, 122, 123, 124, 126, 127, 129 and 130.

Illustrations

(i) A sum of money is bequeathed to A, to be paid to him at the age of 18 and if he shall die before he attains that age, to B A takes a vested interest in the legacy, subject to be dive...

(ii) An estat... *petency of the tes*... tency of the testa...

(iii) A sum o... if B shall then be... a vested interest... lifetime

... should die during ... die before C ... one half of the ... he fund to be ... m as shall be ... quest over can ... ntatives

Notes —If a leg... one, and if he die under that age then to B, ... upon the death of the testator, subject to ... twenty-one *Nicholls* v *Osborn*, 2 P W 419 ... stration (a) is taken from ... marriage but ... ien to C, the ... *rrel* v *Prilly*, 2 Vern 233

Condition must be strictly fulfilled

132 [Suc. S 119 An ulterior bequest of the kind contemplated by section 131 cannot take effect, unless the condition is strictly fulfilled

Illustrations

(i) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D the legacy shall go to E D dies Even if A marries without the consent of B and C the gift of E does not take effect

(ii) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, the legacy shall go to C A marries with the consent of B He afterwards becomes a widower and marries again without the consent of B The bequest to C does not take effect

(iii) A legacy is bequeathed to A to be paid at 18 or marriage, with a proviso that, if A dies under 18 or marries without the consent of B the legacy shall go to C A marries under 18, without the consent of B The bequest to C takes effect

Notes—A legacy to take effect upon a contingency does not arise unless the contingency happens It follows *a fortiori* that an estate once vested will not be divested unless all the events which are to precede the vesting of a substituted devise happen Co Litt 219 B *Doe v Cooke* 7 East 269 *Doe v Hunding* 2 B & Ald 441, *Doe v Jessop*, 12 East 288

Original bequest not affected by invalidity of second

133 [Suc S 120] If the ulterior bequest be not valid the original bequest is not affected by it

Illustrations

(i) An estate is bequeathed to A for his life with a condition superadded that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B The condition being void, A retains his estate as if no condition had been inserted in the Will

(ii) An estate is bequeathed to A for her life and if she do not desert her husband to B A is entitled to the estate during her life as if no condition had been inserted in the Will

(iii) An estate is bequeathed to A for life and if he marries to the eldest son of B for life B at the date of the testator's death, had not had a son The bequest over is void under section 105 and A is entitled to the estate during his life

Notes—In 9 B L R 377, 4 B L R 231 and in a series of other cases it has been shown that specific trust or specific estate good in themselves are not invalidated by a subsequent illegal disposition of the residue or remainder 4 C W N 671 So also where the gift over is invalid and bad in law the original bequest is not affected thereby 24 C 834=24 I A 76 So where the gift over is void under sections 114 and 115 of the Act, the testator's intention has no effect on the words of absolute gift preceding it 20 B 450

Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen, or not happen

134 [Suc S 121] A bequest may be [illegible]

Illustrations

(i) An estate is bequeathed to A for his life with a proviso that in case he shall cut down a certain wood the bequest shall cease to have any effect A cuts down the wood He loses his life interest in the estate

(ii) [illegible] the age of [illegible] ll cease to [illegible] The estate [illegible] o England [illegible] l cease A does not go to England within the time prescribed His interest in the estate ceases

(iv) An estate is bequeathed to A with a proviso that if she becomes a nun she shall cease to have any interest in the estate A becomes a nun She loses her interest under the Will

(v) A fund is bequeathed to A for life, and, after his death, to B if B shall be then living, with a proviso that, if B shall decome a nun, the bequest to her shall cease to have any effect B becomes a nun in the life time of A She thereby loses her contingent interest in the fund

Notes —The object of this section is to get rid of the rule of law that a condition subsequent shall operate merely *in terrorem* unless the legacy, as in *illustration (ii)* to section 131 is given over to another on breach of condition —*Stoke's Succession Act* Where in a condition of residence no manner or period of residence is prescribed, but residence simply and without definition exclusive residence is not supposed to be meant 14 B L R 60 The condition of residence is a valid condition 24 C 646, 22 C L J 61, see also 20 C. 15, 17 C W N 39, 12 C W N 808, 16 B 236, 12 B L R 238

135 [Suc S 122] In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 120

Such condition must not be invalid under section 120

Valid conditions —A condition that a person shall not marry a Christian or become a Christian (*Hodgson* v *Halford* 11 Ch D 959) or become a nun (*Re Dickson's Trusts,* 1 Sim N S 37) or shall give up the habit of keeping low company and frequenting public houses (*Tattersall* v *Howell*, 2 Meri 26, *Neal* v *Hanbury* Pre Ch 173) is not void

136 [Suc S 123] Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject matter of the bequest shall go to another person, or the bequest shall cease to have effect but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act

Result of legatee rendering impossible or indefinitely postponing act for which no time specified and on non performance of which subject matter to go over

Illustrations

(i) A bequest is made to A, with a proviso that unless he enters the Army, the legacy shall go over to B A takes Holy Orders and thereby renders it impossible that he should fulfil the condition B is entitled to receive the legacy

(ii) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter A marries a stranger and thereby indefinitely postpones the fulfilment of the conditions The bequest ceases to have effect.

Notes —Next section lays down that when a time is fixed for the performance of a condition it must be performed within that time But when no such time is fixed, in case of condition subsequent if the legatee does not fulfil it within a reasonable time or renders its fulfilment impossible, the effect of non performance will be attached to the gifts —*Basu's Succession Act*, p 528

137. [Suc S 124] Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non fulfilment of which the subject matter of the bequest is to go over to another person or the bequest is to cease to have effect, the act must be performed within the time specified unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud

Performance of condition, precedent or subsequent, within specified time Further time in case of fraud

Notes —This section is applicable bo . . . . . subsequent This section applies when . . . fixed Even when time is fixed it can' . . . time, on the principle of their having . . . *Vickers*, 14 Vest 311, *Taylor* v. *Paphxn*, 1 Bro C C 169.

CHAPTER XII

Of Bequests with Directions as to Application or Enjoyment.

Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person

138. [Suc S 125.] Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the Will had contained no such direction

Illustration

A sum of money is bequeathed towards purchasing a country residence for A, or *to purchase an annuity for A or to place A in any business A chooses to receive the* legacy in money. He is entitled to do so

Principle —Where property is given to a person absolutely, coupled with a direction that the income shall be applied for his benefit in a certain way, or . . . ght of . . . *undert* . . . s that . . . se can . . . nation . . . *All*

Gen v *Marquis of Ailesbury*, (1887) 12 App Cas 672=57 L J Q B 83 Where the fund is bequeathed absolutely the provision of this section is applicable An absolute property means not only unlimited in estate but unfettered by trust or condition *Ironie* v *Sullivan* L R 8 Eq 673=38 L J Ch 635 As regards what words create absolute estate *vide* (1905) A C 84=9 C W N xcviii, 29 B 375, 48 I A 183=37 Ind Cas 122=38 A 446, 23 Ind Cas 364=36 A 387, 21 C W N 922, 13 Bom L R 141, 23 C W N 419=43 B 88, 49 Ind Cas 645, 35 A 311, 6 Ind Cas 533, 35 C 1069, 21 C 488, 19 C W N 52

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee

139 [Suc S 126.] Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee, if that benefit cannot be obtained for the legatee, the fund belongs to him as if the Will had contained no such direction

Illustrations

. . . divided equally among his . . . shall be settled upon them- . . . after their death All the . . . daughter are entitled to her

. . . *money for his daughter, and he then* . . . pay the income arising from it to her . . . her children after her death The . . . Her representatives are entitled to the fund

Notes —"If you find absolute gift to a legatee in the first instance and trusts are engrafted or imposed on the absolute interest which fail either from lapse or invalidity

(iv) An estate is bequeathed to A with a proviso that if she becomes a nun she shall cease to have any interest in the estate A becomes a nun She loses her interest under the Will

(v) A fund is bequeathed to A for life, and after his death, to B if B shall be then living with a proviso that, if B shall decome a nun the bequest to her shall cease to have any effect B becomes a nun in the life time of A She thereby loses her contingent interest in the fund

[illegible] that a condi

supposed to be meant 14 B L R 6

dition 24 C 646, 22 C L J 61, see also 20 C 15, 17 C W N 39, 12 C W N 808, 16 B 236, 12 B L R 238

135 [Suc S 122] In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 120

Such condition must not be invalid under section 120

[illegible] not marry a Christian or becor[illegible] or become a nun (*Re Dick son's* [illegible] keeping low company and frequenting public houses ([illegible] 2 Mer 26, *Neal* v *Hanbury* Pre Ch 173) is not void

136 [Suc S 123] Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject matter of the bequest shall go to another person, or the bequest shall cease to have effect but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required the legacy shall go as if the legatee had died without performing such act

Result of legatee rendering impossible or indefinitely postponing act for which no time specified and on non performance of which subject matter to go over

Illustrations

(i) A bequest is made to A, with a proviso that unless he enters the Army the legacy shall go over to B A takes Holy Orders and thereby renders it impossible [illegible] d to receive the legacy [illegible] o that it shall cease to have any [illegible] ries a stranger and thereby indefi[illegible] The bequest ceases to have effect. [illegible] fixed for the performance [illegible] when no such time is [illegible] ot fulfil it within a rea[illegible] of non performance will [illegible]

137. [Suc S 124] Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the non fulfilment of which the subject matter of the bequest is to go over to another person or the bequest is to cease to have effect, the act must be performed within the time specified unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud

Performance of condition, precedent or subsequent, within specified time Further time in case of fraud

Notes—This section is applicable both to condition precedent and to condition subsequent This section applies when the time for performance of a condition is fixed. Even when time is fixed it can be performed in certain cases, beyond the time, on the principle of their having been substantially performed *Simpson* v. *Vickers*, 14 Vest 341; *Taylor* v. *Paphkin*, 1 Bro C C 168.

CHAPTER XII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person

138. [Suc S 125.] Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the Will had contained no such direction

Illustration

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A or to place A in any business A chooses to receive the legacy in money He is entitled to do so

Principle—Where property is given to a person absolutely, coupled with a direction that the income shall be applied for his benefit in a certain way, or accumulated, this discretion is generally void, being inconsistent with the right of [illegible] v 334, *Saunders* [illegible] general law is that [illegible]

absolute property means not only unlimited in estate but unfettered by trust or condition *Irons* v *Sullivan* L R 8 Eq 673=38 L J Ch 635 As regards what words create absolute estate *vide* (1905) A C 84=9 C W N xcviii, 29 B 375, 48 I A 183=37 Ind Cas 122=38 A 446, 23 Ind Cas 364=36 A 387, 21 C W N 922, 13 Bom L R 141, 23 C W N 419=43 B 88, 49 Ind Cas 645, 35 A 311; 6 Ind Cas 533, 35 C 1069, 21 C 488, 19 C W N 52

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee

139 [Suc S 126] Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee, if that benefit cannot be obtained for the legatee, the fund belongs to him as if the Will had contained no such direction

Illustrations

(a) A bequeaths the residue of his property to be divided equally among his [illegible] shall be settled upon them [illegible] after their death All the [illegible] daughter are entitled to her [illegible]

[illegible] for his daughter, and he then [illegible] income arising from it to her during her life, and divide the principal [illegible] dren after her death The daughter dies without having ever had a child Her representatives are entitled to the fund

Notes—"If you find absolute gift to a legatee in the first instance and trusts are engrafted or imposed on the absolute interest which fail either from lapse or invalidity

have failed

" Hancock

Absolute

condition

140 [Suc S 127] Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the Will, remains a part of the estate of the testator

Bequest of fund for certain purposes, some of which can not be fulfilled

Illustrations

rticular way, ... de the pra- ... The fund,

(ii) A bequeaths the residue of his estate, to be divided equally among his daughters with a direction that they are to have the interest only during their lives and that at their decease the fund shall go to their children The daughters have no children The fund belongs to the estate of the testator

Notes—Under section 97, where the bequest is made to A and children, or to A ... his heirs, etc A takes the whole ... There the gift is absolute to A 11 ... 9 C W N 1033, 33 C 947, but see 17 C W N 653=40 I A 105

CHAPTER XIII

Of Bequests to an Executor

141 [Suc S 128] If a legacy is bequeathed to a person who is named an executor of the Will, he shall not take the legacy unless he proves the Will or otherwise manifests an intention to act as executor

Legatee named as executor cannot take unless he shows intention to act as executor

Illustration

A legacy is given to A, who is named an executor A orders the funeral according to the directions contained in the Will, and dies a few days after the testator, without having proved the Will A has manifested an intention to act as executor.

Scope—This section applies only where the executor survives the testator and refuses to act as executor 13 M L J 351 The language of this section is peremptory and leaves no room for a presumption it is not left to the Court to ... character as executor ... ence to ... 15 C ... t apply 13 M L J 351

CHAPTER XIV.

Of Specific Legacies

142. [Suc S 129] Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific

Specific legacy defined

Illustrations

(i) A bequeaths to B—

"the diamond ring presented to me by C" :
"my gold chain"
"a certain bale of wool" ·
"a certain piece of cloth"
"all my household goods which shall be in or about my dwelling-house in M. Street, in Calcutta, at the time of my death" :
"the sum of 1,000 rupees in a certain chest"
"the debt which B owes me"
"all my bills, bonds and securities belonging to me lying in my lodgings in Calcutta"
"all my furniture in my house in Calcutta"
"all my goods on board a certain ship now lying in the river Hughli"
"2,000 rupees which I have in the hands of C"
"the money due to me on the bond of D" :
"my mortgage on the Rampur factory"
... factory"
... pees in their 4 per cent. loan"
"all such sums of money as my executors may, after my death, receive in *respect of the debt due to me from the insolvent firm of D and* Company"
... time
"all the money which I have in the 5 ½ per cent loan of the Government of India" .
"all the Government securities I shall be entitled to at the time of my decease"

Each of these legacies is specific

... for 10,000 rupees, bequeaths to ... 00 rupees in trust to sell" for ...

... other places, bequeaths to B ...

an annuity of 500 rupees out of the rents of his zamindari of W

A *directs his zamindari of X to be sold, and the proceeds to be invested for the* benefit of B

Each of these bequests is specific

(v) A by his Will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D.

Each of these bequests is specific.

(vi) A bequeaths a sum of money—

to buy a house in Calcutta for B :
to buy an estate in zila Faridpur for B :
to buy a diamond ring for B :
to buy a horse for B
to be invested in shares in the Imperial Bank of India for B
to be invested in Government securities for B

A bequeaths to B—

"a diamond ring"
"a horse" :
"10,000 rupees worth of Government securities"
"an annuity of 500 rupees" .

"2,000 rupees to be paid in cash"

"so much money as will produce 5 000 rupees four per cent Government securities"

These beq...

... in India, bequeaths a legacy ... rty which he may leave in ... hat it shall be paid out of property which he may leave in England

No one of these legacies is specific

Notes.—A specific legacy may be defined as "a bequest of a particular thing or money specified and distinguished from all others of the same kind as of a horse, a piece of plate money in a purse, stock in the public funds, a security for money which would immediately vest with the assent of the executor"—*Roper on Legacies*, vol I, p 168 The bequest of all a man's personal estate generally is not specific The very terms of such a disposition demonstrate its generality *Williams on Executors*, 11th Ed 928

Bequest of certain sum where stocks, ect, in which invested are described

143 [Suc. S 130] Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the Will

Illustration

A bequeaths to B—

"10 000 rupees of my funded property"

"10,000 rupees of my property now invested in shares of the East Indian Railway Company

"10,000 rupees, at present secured by mortgage of Rampur factory"

No one of these legacies is specific

Scope—Where a certain sum is given, and the stock, etc, is described in the Will that circumstance alone will not make the legacy specific As where the bequest is 'to be the sum of £1,200 of my funded property to be transferred in his name or as it shall appear most benefical to his interest, by an executor' —*Williams on Executors*, 11th Ed p 923

Bequest of stock where testator had, at date of Will equal or greater amount of stock of same kind

144 [Suc S 131] Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his Will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration

A bequeaths to B 5 000 rupees five per cent Government securities A had at the date of the Will five per cent. Government securities for 5,000 rupees The legacy is not specific

Bequest of money where not payable until part of testator's property disposed of in certain way

145 [Suc S 132] A money legacy is not specific merely because the Will directs its payment to be postponed until some part of the property of the testator has been reduced to a certain form, or remitted to a certain place

Illustration

A bequeaths to B 10 000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realised in England The legacy is not specific

Scope—A money legacy will not be rendered specific by its payment being postponed until a particular investment of a fund takes place *Vide Williams on Executors*, 11th Ed p 918, *Raymond v. Brodbelt*, 5 Ves 199

146 [Suc S 133] Where a Will contains a bequest of the residue of the testator s property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed

When enumerated articles not deemed specifically bequeathed

Notes—A mere enumeration of specific things in a residuary bequest will not make the gift of those things specific *Taylor* v *Taylor*, 6 Sim 246 The word "article" refers to movable and not to immovable property 84 Ind Cas 1022 = A I R 1925 Mad 418 = 20 L W 748

147 [Suc S 134] Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing

Retention, in form of specific bequest to several persons in succession

Illustrations

(i) A, having lease of a house for a term of years, fifteen of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B s death to C B is to enjoy the property as A left it, although, if B lives for fifteen [illegible]

[illegible] bequeaths it to C for his life, and, [illegible] A left it although, if B dies before [illegible]

Notes [illegible]

148 [Suc S 135] Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall, be invested in such securities as the High Court may by any general rule authorise or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the Will

Sale and investment of proceeds of property bequeathed to two or more persons in succession

Illustration

A, having a lease for a term of years bequeaths all his property to B for life, and after B s death to C The lease must be sold the proceeds invested as stated in this section and the annual income arising from the fund is to be paid to B for life At B s death the capital of the fund is to be paid to C

Notes—This section incorporates the rule laid down in *Howe* v *Earl of Dartmouth*, 7 Ves 137, with slight alteration

Where deficiency of assets to pay legacies specific legacy not to abate with general legacies

149. [Suc S 136] If there is a deficiency of assets to pay legacies a specific legacy is not liable to abate with the general legacies

Notes—Specific legacies do not abate with general legacies Specific legacy is a legacy "which a testator identifying it by sufficient description and manifesting an intention that it should be enjoyed or taken in the state and condition indicated by that description, separates in favour of a particular legatee, from the general mass of his personal estate" *Robertson* v *Broadbent* 8 A C 813

CHAPTER XV

OF DEMONSTRATIVE LEGACIES

150 [Suc S. 137.] Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative

Demonstrative legacy defined

Explanation—The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific ;
where the legacy is directed to be paid out of specified property, it is demonstrative

Illustrations

(*i*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W The legacy to B is specific, the legacy to C is demonstrative

(*ii*) A bequeaths to B—
"[illegible] my field of Green Acre"
[illegible] factory of Rampur"
[illegible] notes of the Government of India
an annuity of 500 rupees "from my funded property" .
"*1,000 rupees out of the sum of 2,000 rupees due to me by C*"
an annuity, and directs it to be paid "out of the rents arising from my taluk of Ramnagar"

(*iii*) A bequeaths to B—
"10,000 rupees out of my estate at Ramnagar or charges it on his estate at Ramnagar :
"10 000 rupees being my share of the capital embarked in a certain business"
Each of these bequests is demonstrative

Notes—Where the hereditary *jagirs* of a testator were bequeathed to his surviving son with a direction that out of the income of the said *jagirs* his predeceased son's adopted son should receive a certain sum every year from the legatee, *held*, in the circumstances of the case that annuity was a demonstrative legacy within the meaning of this section 109 P R 1908

151 [Suc S 138] Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund and, so far as the residue shall be deficient, out of the general assets of the testator.

Order of payment when legacy directed to be paid out of fund the subject of specific *legacy*

Illustration

A bequeaths to B 1,000 rupees being part of a debt due to him from W He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W The debt due to A from W is only 1,500 rupees ; of these 1,500 rupees, 1 000 rupees belong to B and 500 rupees are to be paid to C C is also to receive 500 rupees out of the general assets of the testator

Notes—As a general rule, on the failure of the particular fund demonstrative legacies will be paid out of the general assets 19 C 444=19 I A 83 But the rule is subject to any direction to the contrary by the testator 29 M 153

CHAPTER XVI

Of Ademption of Legacies

152 [Suc S 139] If anything which has been specifically bequeathed does not belong to the testator at the time of his death or has been converted into property of a different kind, the legacy is adeemed, that is it cannot take effect, by reason of the subject matter having been withdrawn from the operation of the Will

Ademption explained

Illustrations

(i) A bequeaths to B—
'the diamond ring presented to me by C
my gold chain
"a certain bale of wool
'a certain piece of cloth
'all my household goods which shall be in or about my dwelling house in M Street in Calcutta at the time of my death,
A in his life time—
sells or gives away the ring
converts the chain into a cup
converts the wool into cloth
makes the cloth into a garment
takes another house into which he removes all his goods
Each of these legacies is adeemed

(ii) A bequeaths to B—
'the sum of 1 000 rupees in a certain chest
all the horses in my stable
At the death of A, no money is found in the chest, and no horses in the stable The legacies are adeemed

(iii) A bequeaths to B certain bales of goods A takes the goods with him on a vayage The ship and goods are lost at sea, and A is drowned The legacy is adeemed

Notes—The word 'ademption when applied to specific legacies of stock or of money *or securities for money must be considered as synonymous with the word* extraction —*Roper's Legacies*, Vol I, p 287

153. [Suc S 140] A demonstrative legacy is not adeemed by reason that the property on which it is charged by the Will does not exist at the time of the death of the testator, or has been converted into property of a different kind but it shall in such case be paid out of the general assets of the testator

Non ademption of demonstrative legacy

Notes—Demonstrative legacy will not fail if the particular fund though in existence cannot, by reason of some provision of law of which the testator was apparently in ignorance, be charged with the payment of the legacy in question 109, P L R 1908 see also 29 C 444=19 I A 83

154 [Suc S 141] Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed

Ademption of specific bequest of right to receive something from third party

Illustrations

(i) A bequeaths to B—
'the debt which C owes me
1,000 rupees which I have in the hands of D
"the money due to me on the bond of E"
"my mortgage on the Rampur factory"

All these debts are extinguished in A's lifetime some with and some without his consent All the legacies are adeemed

(*u*) A bequeaths to B his interest in certain policies of life assurance A in his lifetime receives the amount of the policies The legacy is adeemed

Notes —There would not be any ademption where the testator takes up money on specific security before the date of the Will *Crockat* v *Crockat* 2 P Will 164

Ademption *pro tanto* by testator s receipt of part of entire thing specifically bequeathed

155 [Suc S 142] The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received

Illustration

A bequeaths to B ' the debt due to me by C The debt amounts 10 000 rupees C pays to A 5,000 rupees the one half of the debt The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A

Notes —The illustration given under this section is based upon *Fryer* v *Morris* 9 Ves 360

Ademption *pro tanto* by testator s receipt of portion of entire fund of which portion has been specifically bequeathed

156 [Suc S 143] If a portion of an entire fund or stock is specifically bequeathed the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received, and the residue of the fund or stock shall be applicable to the discharge of the specific legacy

Illustration

A bequeaths to B one half of the sum of 10 000 rupees due to him from W A in his lifetime receives 6 000 rupees part of the 10,000 rupees The 4 000 rupees which are due from W to A at the time of his death belong to B under the specific bequest

Notes —When stock is specifically bequeathed, and it does not wholly or does only in part exist at the testator's death the legacy will either be totally or partially adeemed as the case may be *Williams on Executors*, 1064

Order of a payment where a portion of fund specifically bequeathed to one legatee and legacy charged on same fund to another and testator having received portion of that fund remainder insufficient to pay both legacies

157 [Suc S 144] Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, then if the testator receives a portion of that fund and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy and the rest of the demonstrative legacy, shall be paid out of the general assets of the testators

Illustration

A bequeaths to B 1 000 rupees, part of the debt of 2 000 rupees due to him from W He also bequeaths to C 1 000 rupees to be paid out of the debt due to him from W A afterwards receives '500'* rupees part of that debt and dies leaving only 1,500 rupees due to him from W Of these 1,500, 1 000 rupees belong to B and 500 rupees are to be paid to C C is also to receive 500 out of the general assets of the testater

Scope —This section lays down the rule of distribution of both specific and demonstrative legacies from the same fund

* Substituted by Act 10 of 1927

Ademption where stock specifically bequeathed, does not exist at testator's death

158 [Suc S. 145] Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed

Illustration

A bequeaths to B—
"My capital stock of 1,000 £ in East India Stock"
"My promissory notes of the Government of India for 10,000 rupees in their 4 per cent loan"

A sells the stock and the notes The legacies are adeemed

Ademption *pro tanto* where stock specifically bequeathed, exists in part only at testator's death

159 [Suc S 146] Where stock which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration

A bequeaths to B his 10 000 rupees in the 5½ per cent loan of the Government of India A sells one half of his 10 000 rupees in the loan in question One half of the legacy is adeemed

160 [Suc S 147] A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Non ademption of specific bequest of goods described as connected with certain place, by reason of removal

Illustrations

(*i*) A bequeaths to B 'all my household goods which shall be in or about my [illegible] time of my death ' The goods are removed from [illegible]

Neither of these legacies is adeemed

Notes—*The general rule that goods specifically bequeathed must be in the*

161 [Suc S 148] The removal of the thing bequeathed from the place in which it is stated in the Will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

When removal of thing bequeathed does not constitute ademption

Illustrations

(*i*) A bequeaths to B 'all the bills, bonds and other securities for money belonging to me now lying in my lodgings in Calcutta." At the time of his death these effects had been removed from his lodgings in Calcutta.

(*ii*) A bequeaths to B all his *furniture then in his house in Calcutta* The testator has a house at Calcutta and another at Chinsurah in which he lives alternately, being ... each house

(*iii*) A b... river Hughli ... they remain at the time of A's death

No one of these legacies is revoked by ademption

... the words of a bequest have not necessarily ... the removal of the articles comprised in the ... that where they were at the date of the Will is ... *eading Cases, p* 269, see also *Norris* v *Norris*, 2 Coll 719, *Rawlinson* v *Rawlinson*, 3 Ch D 302, *Chapman* v *Hart*, 1 Ves Sen 273

162 [Suc S 149] *When thing bequeathed is a valuable to be received by testator from third person, and testator himself, or his representative receives it* — Where the thing bequeathed is not the right to receive something of value from a third person but the money or other commodity which may be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption, but if he mixes it up with the general mass of his property the legacy is adeemed

Illustration

A bequeaths to B whatever sum may be received from his claim on C A receives the whole of his claim on C, and sets it apart from the general mass of his property The legacy is not adeemed

Notes —This is an exception to the rule laid down in s 154

163 [Suc S 150] *Change by operation of law of subject of specific bequest between date of Will and testator's death* — Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change

Illustrations

(*i*) A bequeaths to B 'all the money which I have in the 5½ per cent loan of the Government of India' The securities for the 5½ per cent loan are converted during A's lifetime into 5 per cent stock

(*ii*) A bequeaths to B the sum of 2,000£ invested in consols in the names of trustees for A The sum of 2 000£ is transferred by the trustees into A's own name

(*iii*) A bequeaths to B the sum of 10 000 rupees in promissory notes of the Government of India which he has power under his marriage settlement to dispose of by Will Afterwards in A's lifetime, the fund is converted into consols by virtue of an authority contained in the settlement

No one of these legacies has been adeemed

Notes —Because the alteration of the fund has not been made by the testator, but by the legislature, the act may not be allowed to have the effect of prejudicing the legatee, and since the change might neither have been foreseen nor could be prevented by the testator, it would be unjust to permit that transaction to defeat the disposition specifically made by his Will *Partridge* v *Partridge*, Forrest, 226 *Brandson* v *Winter*, Ambl. 59

164 [Suc S 151] *Change of subject without testator's knowledge* — Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place without the knowledge or sanction of the testator the legacy is not adeemed

Illutration

A bequeaths to B 'all my 3 per cent Consols The Consols are, without A's knowledge sold by his agent and the proceeds converted into East India Stock This legacy is not adeemed

Notes—There is no ademption where the stock has been transformed into another fund without the knowledge or authority of the testator *Shaftesbury* v *Shaftesbury*, 2 Vern 717 *Basan* v *Brandon* 8 Sim, 171 The effect is the same where the agent makes the conversion without being authorised by the testator *Harris* v *Asher*, 2 De G & Sm 436

Stock specifically bequeathed lent to third party on condition that it be replaced

165 [Suc S 152] Where a stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed

Stock specifically bequeathed sold but replaced, and belonging to testator at his death

166 [Suc S 153] Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed

Notes—This section is based on the dictum of *Lord Talbot* in *Patridge* v *Patridge* Forrest, 227

CHAPTER XVII

Of the Payment of Liabilities in respect of the Subject of a Bequest

Non liability of executor to exonerate specific legatees

167. [Suc S 154] (1) Where property specifically bequeathed is subject at the death of testator to any pledge, lien or incumbrance created by the testator himself or by any person under whom he claims, then, unless a contrary intention appears by the Will, the legatee if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance

(2) A contrary intention shall not be inferred from any direction which the Will may contain for the payment of the testator's debts generally

Explanation—A periodical payment in the nature of land revenue or in the nature of rent is not such an incumbrance as is contemplated by this section

Illustrations

(*i*) A bequeaths to B the diamond ring given him by C At A's death the ring is held in pawn by D, to whom it has been pledged by A It is the duty of A's executors if the state of the testator's assets will allow them, to allow B to redeem the ring

(*ii*) A bequeaths to [illegible] gage for 10 000 rupees, and [illegible] the amount of 1,000 rupees [illegible] epts it subject to the charge [illegible] the sum of 11 000 rupees thus due

[illegible] e in existence [illegible] this section [illegible] Cf *Harding* [illegible]

Completion of testator's title to things bequeathed to be at cost of his estate

168 [Suc S 155] Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate

Illustrations

(*i*) A, having contracted in general terms for the purchase of a piece of land at ... he has paid the purchase money ... s assets ... piece of land for a certain sum ... the other half secured by mort ... he has paid or secured any part ... money must be paid out of A s assets

Notes—This section is to be differentiated from section 167 *supra* Here the pledge lien or incumbrance was not in existence at the date of the death of the testator, nor is it created by the testator himself and therefore cases falling under this section do not come within the purview of the previous section In such a case if the purchaser of real estate dies without having paid purchase money the heir at law or devise of land purchased will be entitled to have the estate paid for by the executor or administrator *Milner* v *Mills*, Morely 123

169 [Suc S 156] Where there is a bequest of any interest in immovable property in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them as the case may be, up to the day of his death

Exoneration of legatee s immovable property for which land revenue or rent payable periodically

Illustrations

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent A pays his rent at the usual time, aud dies 25 days after A s estate will make good 25 rupees in respect of the rent

Notes—'*In the case of specific legatees of leaseholds the rule is that all liab* ties existing at the death must be paid out of the res due but those accrued after the death must be borne by the legatee'—*Theobold 7th Ed p 171*

170 [Suc S 157] In the absence of any direction in the Will, where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of the stock, such call or payment shall as between the testator s estate and the legatee be borne by the estate, but, if any call or other payment becomes due in respect of such stock after the testator s death the same shall, as between the testator s estate and the legatee be borne by the legatee if he accepts the bequest

Exoneration of specific legatees stock in joint stock company

Illustrations

(*i*) A bequeaths to B his shares in a certain railway At A's death there was ... are being the amount of a ..., in respect of each share ... espect of the call These

(*ii*) A has agreed to take 50 shares in an intended joint stock company and has contracted to pay up 100 rupees in respect of each share which sum must be paid before his title to the shares can be completed A bequeaths these shares to B The estate of A must make good the payments which were necessary to complete A's title

(*iii*) A bequeaths to B his shares in a certain railway B accepts the legacy After A's death a call is made in respect of the shares B must pay the call

(*iv*) A bequeaths to B his shares in a joint stock company B accepts the bequest Afterwards, the affairs of the company are wound up and each share holder is called upon for contribution The amount of the contribution must be borne by the legatee.

(*v*) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of fifty rupees per share, payable by three instalments A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments

Notes—This seems to be merely the rule established in England by *Romilly M R* in *Armstrong* v *Burnet*, 20 Beav 424 [illustration (*u*)] and *Adams* v *Ferick*, 26 Beav 384 [which suggests illustration (*v*) and by *Kinderley V C* in *Day* v *Day*, Dr & S 262 who says, if the matter "were *resintegra*, I should say generally that the specific legatee must pay the calls made subsequently to the testator s death"—*Stoke's Succession Act*, *p* 122

CHAPTER XVIII

Of Bequests of Things described in General Terms

171. [Suc S 158.] If there is a bequest of something described in general terms, the executor must purchase for the legatee what may resonably be considered to answer the description

Bequest of thing described in general terms

Illustrations

ecutor

ses at

Notes—There are two kinds of legacies, genaral or specific A l gacy is general when it is so given as not to amount to a bequest of a particular thing or of money of the testator distinguished from all others of same kind, a legacy is specific when it is a bequest of a specific part of the testator s personal estate which is distinguishable—*Vide Bc*
as regards general bequest
in the testator s possessio
the estate of the assets w
Winter, Ambl 57 cited in

CHAPTER XIX

Of Bequests of the Interest or Produce of a Fund

172, [Suc S 159] Where the interest or produce of a fund is bequeathed to any person, and the Will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest, shall belong to the legatee

Bequest of interest or produce of fund

Illustrations

(*i*) A bequeaths to B the interest of his 5 per cent promissory notes of the Government of India There is no other clause in the Will affecting those securties B is entitled to A s 5 per cent promissory notes of the Govermment of India

the Govern
the interest

e lands

Principle—"*Prima facie* a gift or produce of a fund is a gift of that produce in perpetuity and is consequently a gift of the fund itself unless there is something upon the face of the Will to show that such was not intention" *Adampson* v *Armitage*, 19 Ves 416, at p 418

Scope of the section —This section provides that where the interest or produce of a fund is bequeathed to any person and the Will affords no indication of an intention that enjoyment of the bequests should be of limited duration the principle as well as interest belongs to the legatee This section although it speaks only of the interest or produce of a fund, applies equally to immovable property See illustration (*iii*) to the section A gift of an income is a gift of the corpus, even

[illegible] ise or through the medium of a trust 21 Ind Cas [illegible] also the bequest of rent shall pass the lands itself [illegible] ot apply where there is a clear indication of the [illegible]

interest or the produce of a fund, [illegible]

418, 15 M 448, 5 C 438=6 I A 182=5 C L R 295,, 13 C L J 618 If income of property is given indefinitely but it is clear from the general reading of the Will that the *corpus* is to be distributed not in the lifetime of the legatees but after their death, they take only life interest 12 B 185, 20 B 450, 14 B 36, 22 B 833 P C

CHAPTER XX

OF BEQUESTS OF ANNUITIES

173. [Suc S 160] Where an annuity is created by Will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the Will, notwithstanding that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it

Annuity created by Will payable for life only unless contrary intention appears by Will

Illustrations

(*i*) A bequeaths to B 500 rupees a year, B is entitled during his life to receive the annual sum of 500 rupees

(*ii*) A bequeaths to B the sum of 500 rupees monthly B is entitled during his life to receive the sum of 500 rupees every month

(*iii*) A bequeaths an annuity of 500 rupees to B for life and on B's death to C B is entitled to an annuity of 500 rupees during his life C if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death

Notes —The principle enunciated in this section cannot apply when a contrary intention appears in the document 56 Ind Cas 801; see also 60 Ind Cas 750, 24 C W N 592, 25 C W N 262=62 Ind Cas 436

174 [Suc. S 161.]. Where the Will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the Will

Period of vesting where Will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity

Illustrations

(*i*) A by his Will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for [illegible]

[illegible] death it [illegible] testator [illegible] C

Notes —In England it makes no difference whether it be a beques of a specified sum to purchase an annuity or direc to i to purchase an annuity of a specified sum *Yates* v *Campton*, 2 P W 308, *Dav on* v *Heron*, 1 R & M 605, *Re Robbins* (1906) 2 Ch 648; (1907) 2 Ch 8

175 [Suc S 162] Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the Will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the Will

Abatement of annuity

Scope —In case of deficiency of assets as a rule general legacies and ... his Will that some ... all such cases the ... t clearly and con- ... Mac & C 513, ... , *Roper* v *Roper*, 3 Ch D 714

176 [Suc S 163] Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator s estate shall be applied for that purpose.

Where gift of annuity and residuary gift whole annuity to be first satisfied

Notes —If there is a clear gift of a life interest and of a reversion, and the estate proves insufficient, each party the tenant for life and reversioner must bear the ... ity and a ... residuary ... until the ... deficiency of assets rank with general or pecuniary legacies *Croly* v *Well*, 3 De G M & G 393

CHAPTER XXI

Of Legacies to Creditors and Portioners.

177 [Suc S 164] Where a debtor bequeaths a legacy to his creditor, and it does not appear from the Will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt

Creditor *prima facie* entitled to legacy as well as debt

Notes —This section appears to be advisedly worded so as to narrow the field *of enquiry to which large extension has been given in England So where a testator* ... *to be benefited and the property by which* ... arts are precluded from going outside the ... ect it seems to have been given to this ... 12 Bom L R 863=8 Ind Cas 181.

178 [Suc S 165] Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his Will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion

Child *prima facie* entitled to legacy as well as portion

Illustration

A, by articles entered into contemplation of his marriage with B covenanted that he would pay to each of t ... iage a portion of 20,000 rupees on her marriage ... en, A bequeaths 20,000 rupees to each of the ... The legatees are entitled to the benefit of this l ...

Person deriving benefit indirectly not put to election

184 [Suc S 171] A person taking no benefit directly under a Will, but deriving a benefit under it indirectly, is not put to his election

Illustration

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child A bequeaths *the lands of Sultanpur to B and 1,000 rupees to C* C dies intestate shortly after the testator and without having made any election D takes out administration to C, and as administrator elects on behalf of C s estate to take under the Will In that capacity he receives the legacy of 1,000 rupees and accounts to B for *the rents of the lands of Sultanpur which accrued after the* death of the testator and before the death of C In his individual character he retains the lands of Sultanpur in opposition to the Will

Scope—A devisee or legatee is not precluded from claiming derivatively through another property which such other person has taken in opposition to the Will Thus a man may be tenant by courtesy, in respect of an estate of inheritance taken by his wife in opposition to Will under which he has accepted benefits, without affecting his title to those benefits *Lady Cavan* v *Pulteney*, 2 Ves Jun 544

Person taking in individual capacity under Will may in other character elect to take in opposition

185 [Suc S. 172] A person who in his individual capacity takes a benefit under a Will may, in another character, elect to take in opposition to the Will

Illustration

The estate of Sultanpur is settled upon A for life, and after his death, upon B A leaves the estate of Sultanpur to D, and 2 000 rupees to B, and 1 000 rupees to C, who is B s only child B dies intestate shortly after the testator, without having made an election C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the Will, and to relinquish the legacy of 2 000 rupees C may do this and yet claim his legacy of 1,000 rupees under the Will

Notes—This section corresponds to clause 4 of section 35 of the Transfer of Property Act Under that section a person taking no benefit directly under a transaction but deriving a benefit under it indirectly need not elect, and a person who in his own capacity takes a benefit under the transaction may in another d s sent therefrom 42 Ind Cas 18=20 O C 243 A creditor by accepting a legacy is not bound to give up his claim for debts 25M 361

Exception to provisions of last six sections

186 [Suc S 172 Exception] Notwithstanding anything contained in sections 180 to 185, where a particular gift is expressed in the Will to be in lieu of something belonging to the legatee which is also in terms disposed of by the Will, then, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the Will

Illustration

Under A's marriage settlement his wife is entitled if she survives him, to the enjoyment of the estate of Sultanpur during her life A by his Will bequeaths to his wife an annuity of 200 rupees during her life in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son He also gives his wife a legacy of 1 000 rupees The widow elects to take what she is entitled to under the settlement She is bound to relinquish the annuity but not the legacy of 1 000 rupees

When acceptance of benefit given by Will constitutes election to take under Will

187. [Suc. S 174] Acceptance of a benefit given by a Will constitutes an election by the legatee to take under the Will, if he had knowledge of his right to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations

(i) A is owner of [illegible] as a life interest in another estate called [illegible] ith his son B will be absolutely entitled [illegible] Khurd to B, and the estate of Sultanpur [illegible] right to the estate of Sultanpur Buzurg, allows C to take possession of it and enters into possession of the estate of Sultanpur Khurd B has not confirmed the bequest of Sultanpur Buzurg to C

[illegible] Su [illegible] A' [illegible] ess [illegible] more than 500 rupees B has not confirmed the bequest of the estate of Sultanpur to C

Notes —No person is bound by [illegible] of his right to elect and of the circu[illegible] of a reasonable man in making the [illegible] Cal 494 Under this section accept[illegible] election by the legatee to take und[illegible] elect and of those circumstances whic[illegible] man in making an election or if he waives enquiry into the circumstances 41 C L J, 258=1925 Cal 724=87 Ind Cas 404 In order to establish a case of election by conduct it must be shown that the person bound to elect has full knowledge of his rights to his property given up, and with that knowledge really meant to give up the property 38 A 637 (P C), 37 C L J 30, 12 C 60

188 (1) [Suc S 174] Such knowledge or waiver of inquiry shall, in the absence of the evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the Will without doing any act to express dissent

Circumstances in which knowledge or waiver is presumed or inferred

(2) [Suc S. 175] Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject matter of the bequest in the same condition as if such act had not been done

Illustration

A bequeaths to B an estate to which C is entitled, and to C a coal mine C takes possession of the mine and exhausts it He has thereby confirmed the bequest of the estate to B

Notes —Under this clause such knowledge or waiver of enquiry shall in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided from him by the Will without doing any act to express dissent 41 C L J 258=1925 Cal 724=87 Ind Cas 404, see also 37 C L J 30

189 [Suc S 176] If the legatee does not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require him to make his election, and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed, to have elected to confirm the Will

When testator's representatives may call upon legatee to elect

Notes —This section is based on the principle that election may be implied from acts done by the person required to make the election if he knows that he has been put to his election *Spread* v *Morgan* 11 H L C 602 (613)

190 [Suc S 177] In case of disability the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Postponement of election in case of disability

Scope of the section —Under th s sec on t appea s h ha t s h
postpo
ttee of
Bough
until the infant came of age

CHAPTER XXIII

Of Gifts in Contemplation of Death

Property transferable by gift made in contemplation of death

191 [Suc S 178] (1) A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by Will

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another the possession of any movable property to keep as a gift in case the donor shall die of that illness

(3) Such a gift may be resumed by the giver, and shall not take effect if he recovers from the illness during which it was made, nor if he survives the person to whom it was made

Illustrations

(*i*) A, being ill and in expectation of death del vers to B, to be retained by him in case of A s death,—

a watch
a bond granted by C to A
a bank note
[illegible] blank

B is entitled to—
the watch
the debt secured by C s bond
The bank note
the promissory note of the Government of India
the bill of exchange
the money secured by the mortgage deeds

(*ii*) A, being ill and in expectation of death delivers to B the key of a trunk or key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the [illegible] eep them in case of A's death A dies of the [illegible] articles B is entitled to the trunk and its warehouse

(*iii*) A being ill and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of B and C The parcels are not delivered during the life of A A dies of the illness during which he sets aside the parcels B and C are not entitled to the contents of the parcels

[illegible] emplation of the conceived
A gift made in contem
gnew v Belfast, (1896) 2 Ir
valid in America *Tidlen*
the Hindus 3 B L R O
C 113, [illegible] to the Mahom
medans *vide* 3 C W
N 57, 4[illegible] , 33 A 731,
31 B 264 154, 35 C 1,
9 A 35, 7 B 233

PART VII

Protection of Property of Deceased

192 (1) [Suc Pro Pro S. 1] If any person dies leaving property, movable or immovable, any person claiming a right by succession thereto or to any portion thereof, may make application to the District Judge of the district where any part of the property is found or situate for relief either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended

Person claiming right by succession to property of deceased, may apply for relief against wrongful possession

(2) [Suc Pro Pro S 2.] Any agent relative or near friend, or the Court of Wards in cases within their cognizance, may, in the event of any minor, or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief

Notes—This part is designed to protect property, but it is only to be used where exceptional grounds for prompt action are necessary to guard against mis

solemn affirmation by an agent of a *pardanashin* lady is a sufficient declaration 10 Ind Cas 820,

193 [Suc Pro Pro S 3] The District judge to whom such application is made shall, in the first place examine the applicant on oath, and may make such further inquiry, if any, as he thinks necessary as to whether there is sufficient ground for believing that the party in posssesion or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit, and that the application is made *bonafide*

Inquiry made by Judge

Notes—This section states what should be done after a party has applied to a Court for relief The judge to whom such application shall be made shall in the first place, examine the applicant on oath and may make such further enquiry as he thinks necessary by witnesses and document at his discretion, whether there be n or taking forcible means for

15 Ind Cas 504 The provisions of this section must be strictly complied with, otherwise the Court has no jurisdiction to apply the provisions of part VII 12 C W N 65=34 C 929, 12 C L J 8, 37 P L R 1904, see also 12 M 341, 71 Ind Cas 32, 72 P R 1918, 24 M 304 28 Ind Cas 248, 138 P R 1906, 11 C L J 521, 15 Ind Cas 304

194 [Suc Pro Pro S 4] If the District Judge is satisfied that there is sufficient ground for believing as aforesaid but not otherwise, he shall summon the party

Procedure

complained of and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to a suit as hereinafter provided) and shall deliver possession accordingly

Provided that the Judge shall have the power to appoint an officer who shall take an inventory of effects and seal or otherwise secure the same upon being applied to for the purpose, without delay, whether he shall have concluded the inquiry necessary for summoning the party complained of or not

Notes -The Court before taking any further steps must, under this section be satisfied of the existence of such strong ground of belief on both points *i e*, that the person in possession has no lawful title and the person applying is likely to be materially prejudiced if left to the ordinary remedy of a regular suit 7 P R 1904 An order under this section is in the nature of a summary decision 11 P R 98, 4 W R Miss 6 The Judge cannot without making an enquiry and without having such strong ground of belief appoint an officer to make an inventory of the property 17 Ind Cas 429=1912 M W N 1164

195 [Suc Pro Pro S 5] If it further appears upon such inquiry as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary proceeding can be determined, and that the delay in obtaining security from the party *in possession or the insufficiency thereof is likely to expose the party out* of possession to considerable risk, provided he is the lawful owner, the District Judge may appoint one or more curators whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary proceeding and the confirmation or delivery of possession in consequence thereof

Appointment of curator pending determination of proceeding

Provided that in the case of land, the Judge may delegate to the Collector or to any officer subordinate to the Collector, the powers of a curator

Provided futher, that every appointment of a curator in respect of any property shall be duly published

Notes —To apply ... a condition precedent
that the Judge should ... ely to be *materially*
prejudiced if left to the ... that the application
was *bonafid* 71 Ind ... ist a person without
allowing him to be hea ... 12 C W N 65=34
C 929, 39 C L J 27 ... is entitled to take
into account the long delay which had occurred A I R 1927 Nag 253=10 Ind Cas 622

196 [Suc Pro Pro S 6] The District Judge may authorise the curator to take possession of the property either generally, or until security is given by the party in possession or until inventories of the property have been made or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession

Powers conferable on curator

Provided that it shall be in the discretion of the Judge to allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories or the securing of deeds or other effects

Notes —This section lays down what powers may be conferred on a curator

197 [Suc C S 23] (1) Where a certificate has been granted under Part X or under the Succession Certificate Act 1889, or a grant of probate or Letters of Administration has been made a curator appointed under this Part shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator

Prohibition of exercise of certain powers by curators

Payment of debts, etc to curators

(2) All persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be

Notes—It must be borne in mind in this connection that a curator can collect debts without taking a succession certificate 20 B 437

Curator to give security and may receive remuneration

198 [Suc Pro Pro S 7] (1) The District Judge shall take from the curator security for the faithful discharge of his trust and for rendering satisfactory accounts of the same as hereinafter provided and may authorise him to receive out of the property such remuneration, in no case exceeding five per centum on the movable property and on the annual profits of the immovable property as the District Judge thinks reasonable

(2) All surplus money realized by the curator shall be paid into Court, and [illegible]

and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, but no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office

Notes— The words 'movable and immovable have been substituted for the words 'personal and 'real' '—*Notes on Clauses*

Report from Collector where estate includes revenue paying land

199 [Suc Pro Pro S 8] (1) Where the estate of the deceased person consists wholly or in part of land paying revenue to Government in all matters regarding the propriety of summoning the party in possession, of appointing a curator, or of nominating individuals to that appointment, the District Judge shall demand a report from the Collector and the Collector shall thereupon furnish the same

Provided that in cases of urgency the Judge may proceed, in the first instance, without such report

d to act in conformity with any such
se than according to such report, he
his reasons to the High Court, and
such reasons, shall direct the Judge to
he Collector

Notes—'The words 'High Court have been substituted here and in other places in this Part where they occur, for the words Court of *Sadir Dewany Adalut* '—*Notes on Clauses*

Institution and defence of suits

200 [Suc Pro Pro S 9] The curator shall be subject to all orders of the District Judge regarding the institution or the defence of suits and all suits may be instituted or defended in the name of the curator on behalf of the estate

Provided that an express authority shall be requisite in the order of the curator s appointment for the collection of debts or rents , but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof

Allowances to apparent owners pending custody by curator

201 [Suc Pro Pro S 10] Pending the custody of the property by the curator, the District Judge may make such allowances to parties having a *prima facie* right thereto as upon a summary investigation of the rights and circumstances of the parties interested he considers necessary, and may, at his discretion take security for the repay

ment thereof with interest in the event of the party being found upon the adjudication of the summary proceeding not to be entitled thereto

Accounts to be filed by curator

202 [Suc Pro S Pro 11] The curator shall file monthly accounts in *abstract and shall on the expiry of each period* of three months if his administration lasts so long and upon giving up the possession of the property file a detailed account of his administration to the satisfaction of the District Judge

Inspection of accounts and *right of interested party to* keep duplicate

203 [Suc Pro Pro S 12] (1) The accounts of the curator shall be open to the inspection of all parties interested and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by the curator

(2) If it is found that the accounts of the curator are in arrear, or that they are erroneous or incomplete or if the curator does not produce them whenever he is ordered to do so by the District Judge he shall be punishable with fine not exceeding one thousand rupees for every such default

Bar to appointment of second curator for same property

204 [Suc Pro Pro S 13] If the Judge of any district has appointed a curator in respect of the whole of the property of a deceased person such appointment shall preclude the Judge of any other district within [illegible] curator but the appointment of a [illegible] the deceased shall not preclude [illegible] other curator in respect of the [illegible]

Provided that no Judge shall appoint a curator or entertain a summary proceeding in respect of property which is the subject of a summary proceeding previously instituted under this Part before another Judge

Provided further that if two or more curators are appointed by different Judges for several parts of an estate, the High Court may make such order as it thinks fit for the appointment of one curator of the whole property

Limitation of time for application for curator

205 [Suc Pro Pro S 14] An application under this Part to the District Judge must be made within six months of the death of the proprietor whose property is claimed by right in succession

[illegible] should be put into possession of [illegible] 1926 Cal 779, see also 34 [illegible]

Bar to enforcement of Part against public settlement or legal directions by deceased

206 [Suc Pro Pro S 15] Nothing in this Part shall be deemed to authorise the contravention of any public act of settlement or of any legal directions given by a deceased *proprietor of any property for the* possession of his property after his decease in the event of minority or otherwise and, in every such case as soon as the Judge having jurisdiction over the property of a deceased person is satisfied of the existence of such *directions he shall give effect thereto*

Notes —This part provides exceptional procedures and as such recourse must be had to this Part very cautiously The law laid down in this part is in fact out of date 80 Ind Cas 269=26 Bom L R 145=1924 Bom 507

Court of Wards to be made curator in case of minors having property subject to its jurisdiction

***207 [Suc Pro Pro S 16]** Nothing in this Part shall be deemed to* authorise any disturbance of the possession of a [illegible] and in case a [illegible] se prop [illegible] the party [illegible] der this

on and to the estate minor or ng appears to be entitled to the property, possession shall be delivered to the Court of Wards

Saving of right to bring suit

208 [Suc Pro. Pro S 17.] Nothing contained in this Part shall be any impediment to the bringing of a suit either by the party whose application may have been rejected before or after the summonning of the party in possession, or by the party who may have been evicted from the possession under this Part.

Effect of decision of summary proceeding

209 [Suc Pro Pro S 18] The decision of a District Judge in a summary proceeding under this Part shall have no other effect than that of settling the actual possession, *but for this purpose it shall be final*, and shall not be subject to any appeal or review

Appointment of public curators

210 [uc Pro Pro S 19] The Local Government may appoint public curators for any district or number of districts, and the District Judge having jurisdiction shall *nominate such public curators in all cases* where the choice of a curator is left discretionary with him under this Part

PART VIII

REPRESENTATIVE TITLE TO PROPERTY OF DECEASED ON SUCCESSION

Character and property of executor or administrator as such

211 [Suc S 179] (1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such

(2) When the deceased was a Hindu, Muhammadan Buddhist, Sikh or Jaina or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by *survivorship to some other person*

Notes —Under this section all the property of the deceased vests in the executor and as such probate is not necessary to make a person an executor 17 Ind Cas 4= 36 M 575, see also 8 B 241, 10B 468 So far as representatives are concerned, the property of the deceased person vests in the executor or the administrator and this

section makes no distinction between them So an *administrator like an executor after* the grant of letters of administration fully represents the estate of the deceased 10 C W N 422 The probate establishes the Will from the date of the testator's death and ... provided by law that ... hich he has done in ... =78 Ind Cas 243, ... , 34 M 211, 36 M. 575; 39 M. 365 *There is high authority for the view that the words "all the* property of the deceased' must be construed as meaning the actual property of the deceased whether held by him for his own benefit or for the benefit of others 12 B L R 423, see also A I R (1926) Pat 130 An executor as much has no title to property which did not belong to the testator or over which he had no disposing power 2 C L R 422=4 C 1 The term includes property whether situated in British India or in any other place 21 B 139 The *property vests in the executor by virtue of the Will not of the probate* 4 C 363, 8 B 241 Under this section the executor of a Mohamedan Will is placed in possession of the entire property belonging to the deceased and not merely of a third of the properties over which alone he had a power of disposition 29 Bom L R 434=102 Ind Cas 129=A I R. 1927 Bom 387 A decree passed against the widow of a non Indian Christian is not valid A I R 1928 Rang 83

212 (1) [Suc. S. 190.] *No right to any part of the property of a person* who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction

Right to intestate's property

(2) [Suc S. 331 & N. C Ad S 3] This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina or Indian Christian

Notes—Under this section an administrator of a deceased person is the legal representative of a deceased person, and no right to any part of the property of an intestate person can be established in a Court of justice unless letters of administration have been granted 9 Bur L T. 122, see also 4 A 192; 7 C 574, 12 C W N 738 Where a party does not rely on title of the deceased owner, but on his own ... 1044; 37 C 754; 36 ... of administration is ... 13 C W N 1190, 45 Ind Cas 162= ... suit In respect of ... without letters of ... ction where the suit ... 9 Bom L. R 903= 104 Ind Cas 794=A I R 1927 Bom 474

213 (1) [Suc S 187] No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in British India has granted probate of the Will under which the right is *claimed, or has granted letters of administration with* the Will or with a copy of an authenticated copy of the Will annexed

Right as executor or legatee when established

(2) [Suc S 331 & H W S 2] This section shall not apply in the case of ... apply in the case of Wills made ... re such Wills are of the "class ... 57."*

... of the legislature is clear that the party claiming an ... ms by the ... Ind Cas ... J 680 The actual probate must be produced and the order of the Court is not sufficient

* Substituted by Act 18 of 1929

wi ... ee also 12 O. C 890=4 Ind Cs ... 30 C 1044, 32 C 710 Th ... or establishing any right as ex... 1; see also 21 C. L J 96, 42 C 953 The law is the same as the law of England 3 Ind Cas 475=33 M 91, 45 M L J 175=17 L W 763=72 Ind Cas 558=1924 Mad 67, 39 M L J 214=105 Ind Cas 194 But this section does not stand in the way of a person who desires to establish the legate... defence 87 Ind Cas 354, but se... 454, 33 M 91, 50 M 927, ... debar the use of a Will in ev... right as executor or legatee 20 C W N 122, 20 C L J 307, 4 C 508, 14 M 454

Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons

214 [Suc Cer S 4] (1) No Court shall—

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, *to execute against such a debtor a decree or order for the payment of his debt,* except on the production, by the person so claiming of—

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator General's Act, 1913,* and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act, 1889,† or

(v) a certificate granted under Bombay Regulation No VIII of 1827, and, if granted after the first day of May, 1889, having the debt specified therein

(2) The word "debt" in sub section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes

Succession—Viewed historically succession was a term confined to movable and inheritance to immovable property 17 Bom L R 799=33 Ind Cas 107 Where a person is not entitled to deceased's estate, he is not entitled to a succession certificate 19 A L J 272=43 A 450, 34 Ind Cas 364=38A 474=14 A L J 677

Scope of the section—This section is mandatory 13 C 47, 5 A 555=A W N 1883 133, 6 M H C R 131 Without a certificate even a decree by consent cannot be passed 15 B 105, 12 A L J 672=24 Ind Cas 93, 17 M 14, 2 L B R 164, 36 C 936=13 C W N 966 2 C W N 591, 26 C W N 488 An order directing the ... sion certificate is necess... is forthcoming 27 Ind ... has no interest in any ... ascertained and in seek... necessary 60 C 1135=37 C W N 769=A I R 1933 Cal 841

Opportunity should be given to file certificate—Under this section, the production of succession certificate is not a condition precedent to the institution of a suit, it is sufficient if the certificate is produced at any time before the decree is made 78 *Ind Cas* 307=5 P L T 504 *Where certificate* is necessary it is enough that certificate is produced before a decree 16 M 454, 13 C. W N 509=9 C L J 331, 17 M 14, 4 A 485, 10 B 107, 13 C 47, 21 B 480, 5 A 212, 27 P R 1891, 54 P R 1893, (1926) M W N

* Act III of 1913

† Act VII of 1889

627, Where such certificate or authority is found to be necessary, the Court should give the plaintiff an opportunity of producing the certificate or authority within a specified time 10 Bur L T 233, 27 Ind Cas 234, 27 Ind Cas 822, 19 C 439, 44 Ind Cas 733, 24 Ind Cas 143, 88 P R 1891, 20 P R 1901, 13 Ind Cas 363, 94 P L R 1902, 78 Ind Cas 507, 57 Ind Cas 55=42 A 549 But if the plaintiff fails to produce the certificate even after time is given the Court can dismiss the suit 15 A 555, 24 Ind Cas 143 Objection regarding want of certificate, ought not to be allowed to be taken for the first time in appeal 28 C 246=5 C W N 604, A W N 1888 202, 15 C 54; but see 78 Ind Cas 307, 30 Ind Cas 510, 71 Ind Cas 840, 19 C W N 794 When debt is paid to the real heir of of the deceased, who is not a certificate holder, before the grant of certificate it is a good defence in a suit brought by the certificate holder 1926 M W N 116

Debt—A sum payable upon a contingency is not a debt or does not become debt until the contingency has happened 10 C L J 810=13 C W N 966, see also 30 A 315; 1896 P J 713, 18 B 394 Mesne profits are not debts 5 W R 160 Equity of redemption is not a debt 2 M 296, 22 M 139, 15 Ind Cas 425 A claim for unliquidated damage is not a debt 18 M 457=5 M L J 61 Paddy rent is not a debt 2 Bur L J 45=75 Ind Cas 237

Debts due to deceased co parceners—Where the family is admittedly undivided and the plaintiff claims by survivorship no succession certificate is necessary 22 M 380, 1 C W N 32, 23 C 912, 17 A 578 1 Bom L R 197, 16 B 240, 9 C P L R 65; 19 B 338, 20 P R 1901, 12 C W N 145, 13 C L J 203=38 C 182, 36 A 380, 12 A L J 672, 26 C W N 448, 20 M 232 But property over which a person has absolute power of disposal and over which his co parcenars have no power of control, forms part of his 'effects and provisions of this section apply to such a case 44 M 499, 13 Ind Cas 363

[illegible] different pers [illegible] A 129, 7 A [illegible] 341, 16 C [illegible] =71 Ind Cas 376 But now see s 372 (3) *infra*

Mortgage suit—It is well settled that a suit to enforce mortgages other than simple mortgage is not a suit for debt A suit for foreclosure of a mortgage is not *one for payment of a* [illegible] VII of 1889 16 M 64, 24 M 22, A [illegible] 16 But so far as simple mortgages are [illegible] is among several High Courts Accordi [illegible] sion certificate is necessary in respect of a mortgage debt 24 A L J 888, 16 A 254 (F B), 9 A L J 766, 35 A 73, 14 Ind Cas 570, U B R (1892-96) Vol, II 639 But the Calcutta Bombay and Madras High Courts think that in such a suit no succession certificate is necessary 19 C 386, 15 C 54, 9 W R 170 (F B), 2[illegible] C 143, 4 C W N 558=26 C 839, 28 B 630, 20 M 332, 29 M 77, 8 C W N 174, 16 Ind Cas 224=12 M L T 202=1912 M W N 1115, 5 Ind Cas 4[illegible]5=5 Bur L T 102, 50 Ind Cas 271 For obtaining a personal decree in a mortgage suit a succession certificate is necessary 12 C W N 145=7 C L J 658=35 C 767; 6 Bom L R 582=28 B 630, 35 C 767, 19 C 356, 16 Ind Cas 224=(1912) M W N 1115

Insurance policy—Insurance money is part of the estate of the deceased 37 B 471, 18 C W N 1335, 33 M 163, 35 Ind Cas 157, see also 36 M 162, 25 M L J 65, 19 M 121, 50 M 412=A I R 1927 Mad 359=52 M L J 171

Assignment of debts—An assignee from the heirs of a deceased owner is required to produce a succession certificate in order to recover debt due to the deceased 15 M 419=2 M L J 116, 4 C 645, 37 P R 1893, 1893 P J 55, 18 B 315, see also 10 A L J 406=35 A 74, 38 A 474; 38 A 438, 40 Ind Cas 96, 62 Ind Cas 044, 57 Ind Cas 55=42 A 549 A right under this Act is not transferable A W N 1887, 248

Rent—Rent for agricultural land is not a debt" 26 C 536=3 C W N 294, 27 C 556, 17 M L J 257, 18 Ind Cas 495 A bond executed in lieu of rent is not rent I M L J 680 But arrears of rent to non agricultural land is a debt 15 C W N 1018=10 Ind Cas 357, see also 41 Ind Cas 84

Partner—Where one of the partners dies during the pending of a suit the right to sue in respect of debts due to the firm survives to the surviving partner 17 C L J 648, 44 Ind Cas 911, but see 31 Ind Cas 904, 20 A 365, 17 B 6 No succession certificate is necessary where one of the joint creditors is dead 9 C L J 331=13 C W N 509

[illegible] les that the Court [illegible] other of the cer [illegible], 5 A 512, 13 C [illegible]; 11 W R 204 [illegible] were pending at [illegible] ct 14 M 458=1 M L J 602

215 (1) [Suc S 21 & Pro S 152] (1) A grant of probate or letters of administration in respect of an estate shall be deemed to supersede any certificate previously granted under Part X or under the Succession Certificate Act, 1889, or Bombay Regulation No VIII of 1827, in respect of any debts or securities included in the estate

Effect on certificate of subsequent probate or letters of administration

(2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of any such certificate regarding any such debt or security is pending the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending be entitled to take the place of the holder of the certificate in the suit or proceeding

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration

Notes—An administrator appointed under section 10 of the Bombay Regulation does not fully represent the deceased 21 B 1028, but see 12 B 150

216 [Suc S 260 & Pro S 82] After any grant of probate or letters of administration, no other than the person to whom the same may have been granted shall have power to sue or prosecute any suit, otherwise act as representative of the deceased throughout the province in which the same may have been granted, until such probate or letters of administration has or have been recalled or revoked

Grantee of probate or administration alone to sue etc until same revoked

Notes—Under this section and Order 31, rule 1 of the C P Code no one but an executor is competent to prosecute a suit with respect to matter arising out of the estate of deceased. 55 Ind Cas 504, 12 B 150, see also 18 B 237 The estate vests in the executor for the purpose of administration and as such he is entitled to maintain a suit for the recovery of a debt due to the estate of the de[illegible] *60 Ind Cas 350=2 Pat L T 365*, [illegible] applies to all Hindus 39 M 365 A [illegible] executor a party is not maintain[illegible]

PART IX

PROBATE, LETTERS OF ADMINISTRATION AND ADMINISTRATION OF ASSETS OF DECEASED

217 [Suc S 2 & Pro Ss 2 & 150] Save as otherwise provided by this Act or by any other law for the time being in force all grants of probate and letters of administration with the Will annexed and the administration of the assets of the deceased in cases of intestate succession shall be made or carried out, as the case may be, in accordance with the provisions of this Part

Application of Part

Scope of the section—This part is of universal application 15 C W N 158=12 C L J 459=8 Ind Cas 41=19 B 15

CHAPTER I

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION

218 [Pro S 23] (1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who according to the rules for the distribution of the estate, applicable in the case of such deceased would be entitled to the whole or any part of such deceased s estate

To whom administration may be granted where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person

[illegible] uch administration, it shall be [illegible] one or more of them [illegible] y be granted to a creditor of the deceased

Notes—This section only confers jurisdiction upon the District Judge to grant letters of administration in cases of intestacy and the grant is directed to be made to the person who would be entitled to the whole or any part of the estate of the deceased according to the rules for the distribution of the estate of an intestate applicable to this case 15 C W N 1021=13 C L J 547 As the estate vests in the intestate heir so it is not obligatory on a Hindu heir to obtain letters of administration to the estate of the last owner 13 C W N 1190 The evident meaning of this section is that the letters of administration should be granted to one who would inherit the property of the intestate For this purpose the Court should consider by what law the intestate is governed 5 C W N 873=28 C 608, see also 46 P W R 1910=6 Ind Cas 650, 17 C W N 613 54 Ind Cas 807, 1 L B R 284, 21 C 164, U B R (1892 1896) Vol, II, 608 The rules for the distribution of an intestate s estate referred to in this section must be taken to mean the ordinary and obvious rights of succession and inheritance L B R (1893 1900) 622, 5 C W N cclxxvii A widow of a deceased Hindu is entitled to letters of administration of his estate 61 Ind Cas 16

219 [Suc S 200] If the deceased has died intestate and was not a person belonging to any of the classes referred to in section 218, those who are connected with him either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated, namely —

Where deceased is not a Hindu Muhammadan, Buddhist, Sikh, Jaina or exempted person

(*a*) **[Suc S 201]** If the deceased has left a widow, administration shall be granted to the widow, unless the Court sees cause to exclude her either on the ground of some personal disqualification or because she has no interest in the estate of the deceased

Illustrations

(*i*) The widow is a lunatic or has committed adultery or has been barred by her marriage settlement of all interest in her husband s estate There is cause for excluding her from the administration

(*ii*) The widow has married again since the decease of her husband This is not good cause for her exclusion

(*b*) **[Suc S 202]** If the Judge thinks proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow

(*c*) **[Suc S 203]** If there is no widow, or if the Court sees cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate

Provided that, when the mother of the deceased is one of the class of persons so entitled she shall be solely entitled to administration

(*d*) [Suc S 204] Those who stand in equal degree of kindred to the deceased are equally entitled to administration

(*e*) [Suc S 205] The husband surviving his wife has the same right of administration of her estate as the widow has in respect of the estate of her husband

(*f*) [Suc S 206] When there is no person connected with the deceased by marriage or consanguinity who is entitled to the letters of administration and willing to act, they may be granted to a creditor

(*g*) [Suc S 207] Where the deceased has left property in British India, letters of administration shall be granted according to the foregoing rules, notwithstanding that he had his domicile in a country in which the law relating to testate and intestate succession differs from the law of British India

Notes ... an administrator derives his autho... *Winkford* 1 Salk 301, *Creed* v ... a joint administrator and never ... The claim of the widow can be set aside and grant can be made to the next of kin for good cause *In the goods of Anderson* 3 Sw & Tr 489 But a person who has no present interest in the ... 164 There is nothing in the letters of administration to all ... ason of their equal nearness of ... 151, see also 5 C L R 363;

220 [Suc S 191 & Pro S 14] Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his death

Effect of letters of administration

Notes—This section refers only to cases of intestacy but the same principle ... with Will annexed where no executor is ... with Will annexed *Heil 3rd Ed* 763 ... 35 thought it otherwise In that case he ... of the Probate and Administration Act refer to cases where letters of administrations have been granted to the estate of an intestate where on the other hand, letters of administration have been granted not upon intestacy but with copy of the Will annexed the first portion of section 112 is applicable A grant of administration does not decide any question of title It merely decides the right to administer A I R (1906) Pat 356

221 [Suc S 292 & Pro S 15] Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate

Acts not validated by administration

... this ... act ... they ... as if ... 53,

222 (1) [Suc S 181 & Pro S 6] Probate shall be granted only to an executor appointed by the Will

Probate only to appointed executor

(2) [Suc S. 182 & Pro S 7] The appointment may be expressed or by necessary implication

Illustrations

(*i*) A wills that C be his executor if B will not B is appointed executor by implication

(*ii*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter in law C and adds but should the within named C be not living

I do constitute and appoint B my whole and sole executrix' C is appointed executrix by implication

id codicils and his nephew
I appoint my nephew my
ist my Will and codicils
ecutor by implication

Notes—Before the applicants are entitled to probate or grants of letters of ad
are executors or that under the Will the pro
27=7 Ind Cas 979 A person who is not nam
apply for probate but can get letters of admins
345, 6 C W N 787, 15 M 359, 19 C 582 7
B L R 563 A probate granted W N
787 The personal property of th in him
before the testator's death 20 C 133, 36
M 575 The grant of probate does not make valid an invalid disposition and as
such a e 4 C
1, 12 B of the
27 C
b) appears to be compiled *verbatim* from cases
B H C R A C J 64 see also 102 *Ind*
Cas 194 An executor can be appointed by necessary implication 1927 Cal 164
Disposition and legacies do not make a person legatee 1927 Mad 243

223 [Suc S 183 & Pro S 8] Probate cannot be granted to any person who is a minor or is of unsound mind * nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by Governor General in Council in this behalf †

Persons to whom probate cannot be granted

Notes—Infants are capable of being executors,—nay even a child in the womb and unborn at the testator's death *Walker & Egood* 10 5 Bur L T 235=18 Ind Cas 187, 27 Ind Cas 749, 21 C 911

224 [Suc S 184 & Pro S 9] When several executors are appointed, probate may be granted to them all simultaneously or at different times

Grant of probate to several executors simultaneously or at different times

Illustration

A is an executor of B's Will by express appointment and C an executor of it by implication Probate may be granted to A and C at the same time or to A first and and then to C, or to C first and then to A

Notes—Where all the executors have applied the probate is granted simultaneously But an executor whose appointment is not beneficial to the estate may be excluded 1 A L J 121 Where one of several executors applied for probate the
R 281, 20 A 189, 21 C 195,
Where there is provision in the
death of the first the second
t executor 26 B 571

225 [Suc S 185 & Pro S. 10] (1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the Will

Separate probate of codicil discovered after grant of probate

(2) If different executors are appointed by the codicil, the probate of the Will shall be revoked, and a new probate granted of the Will and the codicil together

* Certain words after this repealed by Act 18 of 1927 have been omitted
† Inserted by Act 17 of 1931

Notes—Where there is a Will and a codicil and one of them is lost in the absence of any evidence of the contents of the missing document, probate may be granted of the other limited until the original or a copy of the missing document be found and brought in *In the goods of Coulthard*, 11 Jur N S 184

226 [Suc S 186 & Pro. S 11] When probate has been granted to several executors and one of them dies, the entire representation of the testator accrues to the surviving executor or executors

Accrual of representation to surviving executor

Notes—Under this section the representation of the estate of the testator accrues to the surviving executor or executors 9 C L J 382=13 C W N 657 In India on the death of an executor, his executor does not represent the estate 12 B L R 423, 17 M L T 61=27 Ind Cas 249 But a *shebait* can be empowered to appoint his successors 12 C 375

227 [Suc. S 188 & Pro S 12] Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such

Effect of probate

Notes—The property vests in the executor by virtue of the Will not of the [illegible] method [illegible] probate [illegible] B 461, [illegible] section validates the acts of executors previous to the grant only when such probate remains in force and is not revoked 3 C W N 202 (N)

228 [Suc S 190 & Pro S 5] When a Will has been proved and deposited in a Court of a competent jurisdiction situated beyond the limits of the Province whether within or beyond the limits of His Majesty's dominions and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed

Administration with copy annexed, of authenticated copy of Will proved abroad

Notes—This section does not require that the Will should remain in Court for [illegible] he Will had in fact [illegible] e Court had before [illegible] the validity of the [illegible] idia are competent [illegible] authenticated copy of foreign Wills [illegible] R 33 The grant of administration [illegible] 62 Ind Cas 513=2 Pat L T 683 [illegible] l under the law to file an affidavit of [illegible] urt Fees Act 62 Ind Cas 513

229 [Suc S 193 & Pro S 16] When a person appointed an executor has not renounced the executorship letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship

Grant of administration where executor has not renounced

Provided that when one or more of several executors have proved a Will the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved

Notes—The Court should issue special citation to an executor when he does not appear on a general citation 47 C 838=60 Ind Cas 974, 13 Bom L R 98=9 Ind Cas 354, 12 B 164 When application is made for the letters of administration of the estate of a deceased woman of the town a special citation shall be issued to the Government solicitor 17 C W N 629

230 [Suc S 194 & Pro S 17] The renunciation may be made orally in the presence of the Judge or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the Will appointing him executor.

Form and effect of renunciation of executorship

Notes—An executor called upon by citation to accept or renounce is clearly compellable if he accepts to take probate within a limited time If he does not do so, letters of administration with a copy of the Will annexed may be granted to any competent applicant 36 Ind Cas 373=40 B 696, 19 B 23 20 B 227 Renunciation need not be in writing, a parol one is sufficient Eng W N 1873 189, 5 C W N clv The executor may challenge the genuineness of the Will and at the same time claim probate if it is proved to be genuine 47 C 838

231 [Suc S 195 & Pro S 18] If an executor renounces, or fails to accept an executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration, with a copy of the Will annexed may be granted to the person who would be entitled to administration in case of intestacy

Procedure where executor renounces or fails to accept within time limited

Notes—The executor must prove the Will within the time fixed in the notice 19 B 123 The executor must renounce or be cited before any party having an inferior interest can take His consent alone is not sufficient for that purpose *Garrard* v *Garrard*, 2 P & M 238

232 [Suc S 196 & Pro S 19] When—

Grant of administration to universal or residuary legatees

(*a*) the deceased has made a Will, but has not appointed an executor, or

(*b*) the deceased has appointed an executor who is legally incapable or refuses to act or who has died before the testator or before he has proved the Will, or

(*c*) the executor dies after having proved the Will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the Will and letters of administration with the Will annexed may be granted to him of the whole estate or of so much thereof as may be unadministered

Notes—Under this section a universal or residuary legatee is entitled to letters of administration with the Will annexed The legislature intended that they are to be excluded from probate 19 C 581, 6 C W N 787, 130 P R 1890, 73 P L R 1908 The title of an universal legatee is not established until the Will is proved 26 B 267 Where a residue is given to an idol, the idol is the residuary legatee 17 C W N 411

233 [Suc S 197 & Pro S 20] When a residuary legatee who has a beneficial interest survives the testator but dies before the estate has been fully administered his representative has the same right to administration with the Will annexed as such residuary legatee

Right to administration of representative of the deceased residuary legatee

Notes—Where the estate has been fully administered no letters of administration should be granted 17 C L J 66, 17 Ind Cas 155 If the residuary legatee renounces grant can be made to the next of kin *In the goods of Hinckley*, 1 Hagg 477 The representative of an ordinary legatee does not possess any such right 45 C 862=51 Ind Cas 76

234 [Suc S 198 & Pro S 21] When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other

Grant of administration where no executor, not residuary legatee nor representative of such legatee

legatee having a beneficial interest, or a creditor may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly

Notes—If the Will disposes of the residue, but all persons interested therein under the Will renounce the grant is made to the husband or widow or failing them, to the testator's next of kin *West v Wilby* 3 Phil a p 381 The power to grant letters of administration is discretionary with the Court and no one can claim it as a matter of right 1 B L R O C J 19, (1917) P L R 56, 1 B L R O C J 3 The grant may be made to a creditor, on the renunciation or after citation of the executor the residuary legatee and the residuary devisee 30 Ind. Cas 558, but see 10 C W N lviii

235 [Suc S 99 & Pro S 22] Letters of administration with the Will annexed shall not be granted to any legatee, other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned calling on the next of kin to accept or refuse letters of administration

Citation before grant of administration to legatee other than universal or residuary

Notes—Citations should always issue to parties who are known to the Court to be interested or to claim any interest in the estate of the deceased. 1907 Cal. 297

236 [Suc S 189 & Pro S 23] Letters of administration cannot be granted to any person who is a minor or is of unsound mind,* "nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by the Governor General in Council in this behalf"†

To whom administration may not be granted

Notes—The Court can refuse probate to an executor even on ground of legal incapacity, minority or unsoundness of mind A. I R (1926) Mad 605, Similarly letters of administration cannot be granted to minors under guardianship of another 5 A. L. J 736, 50 Ind Cas 324—A I R (1925) Pat 573 56 Ind Cas. 841, 10 Bur L T 184 But where a person solely entitled to administration is a minor, administration is committed to another for his use and profit until he attains majority 5 Bur L T 235=6 L. B R 118=18 Ind. Cas 187

CHAPTER II

Of Limited Grants

Grants limited in duration

237. [Suc S 208 & Pro S 24] When a Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator and a copy or the draft of the Will has been preserved probate may be granted of such copy or draft limited until the original or a properly authenticated copy of it is produced

Probate of copy or draft of lost Will

N[illegible] will be at liberty to [illegible] true copy of the Will [illegible] destroyed by any act of the testator it has [illegible] Ind Cas 121

238 [Suc S 209 & Pro S 25] When a Will has been lost or destroyed and no copy has been made nor the draft preserved probate may be granted of its contents if they can be established by evidence

Probate of contents of lost or destroyed Will

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* Certain words after this repealed by Act 18 of 1927 have been omitted

† Inserted by Act 17 of 1931

Notes —Section 237 deals with cases where a copy of the Will is available and this section deals with cases where no copy is available 18 C W N 527=21 Ind Cas 121 Where the Will was in existence some time before the testator's death but was not four ... does not arise 13 M L J 135 ... proved probate will be granted ... I 617=26 C 634

239 [Suc S 210 & Pro S 26] When the Will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interest of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will or an authenticated copy of it is produced

Probate of copy where original exists

... of a foreign Court or in the ... deliver it up probate may be ... such time as the original ... see also 7 C L R 357 ... Calcutta High Court has been laid down

240 [Suc S 211 & Pro S 27] Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will or an authenticated copy of it is produced

Administration until Will produced

Grants for the use and benefit of others having right

241 [Suc S 212 & Pro S 28] When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration, with the Will annexed, may be granted to the attorney or agent of the absent executor, for the use and benefit of his principal limited until he shall obtain probate or letters of administration granted to himself

Administration with Will annexed, to attorney of absent executor

Notes —The attorney must live within the jurisdiction of the Court 4 B L R App 49, 28 P R 1883 An agent duly appointed by an executor can apply under this section 28 P R 1871

242 [Suc S 213 & Pro S. 29] When any person to whom if present, letters of administration, with the Will annexed, might be granted, is absent from the province, letters of administration with the Will annexed, may be granted to his attorney or agent, limited as mentioned in section 241

Administration, with Will annexed, to attorney of absent person who, if present, would be entitled to administer

... larly limited, ... attorney of the ... with the W... of ... e of several ... to ... ll of whom a ... Pro ... p 300

243 [Suc S 214 & Pro S 30] When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney or agent of the absent person, limited as mentioned in section 241

Administration to attorney of absent person entitled to administer in case of intestacy

Notes —Where a sharer is willing to act, a limited grant should not be made to the attorney of another absent sharer 26 Ind Cas 243=8 Bur L T 103

244 [Suc. S. 215 & Pro S 31]

Administration during minority of sole executor or residuary legatee

When a minor is sole executor or sole residuary legatee, letters of administration, with the Will annexed, may be granted to the legal guardian of such minor or to such other person as the Court may think fit until the minor has attained his majority at which period and not before probate of the Will shall be granted to him

Notes—If the person appointed sole executor or sole residuary legatee, be within age, a peculiar sort of administration *cum testamento annexo* must be granted which is called an administration *durante minore aetate* *Willams on Executor*, p 392, 6 L B R 118 = 18 Ind Cas 187, 1 P L T 304 = 57 Ind Cas 383 In this section the term 'legal guardian' means a guardian appointed under the Guardians and Wards Act, (1920) Pat 182 = 57 Ind Cas 583 31 C 706 The Court of Wards is not a person and letters of administration under the law cannot be granted to it 25 C 795 = 2 C W N 349, but see 10 C W N 241

245 [Suc S 216 & Pro S 32]

Administration during minority of several executors or residuary legatees

When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have attained his majority

Notes—An administration *durante minore aetate* is also granted where there are several executors, all of whom are minors In such a case the administration ceases when the first comes of age and proves the Will 4 Burn E L 385 9th Ed, see also 21 C 911

246 [Suc S 217 & Pro S 33]

Administration for use and benefit of lunatic or minor

If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased is a minor or lunatic letters of administration, with or without the Will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there is no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the minor or lunatic until he attains majority or becomes of sound mind, as the case may be

Notes—If the sole executor, or the person solely entitled to administration with ... *aetate* is granted to ... rity *Mortimer*, 368 ... administration to the ... rs the soundness of ... L J 736 = 1908 A ... W N 257

247 [Suc S 218 & Pro S 34]

Administration *pendente lite*

Pending any suit touching the validity of the Will of a deceased person or for obtaining or evoking any probate or any grant of letters ... the estate of such ... a general adminis ... very such adminis ... ourt and shall act

Notes—The Court of Probate could grant administration *pendente lite* in all cases where the necessity of the grant is made out 13 C L J 34 The applicant must ... necessary for the preservation of ... or dividends on shares as they ... in a position to discharge these ... L R 797 The position of an ad ... ing is closely analogous to that of a

rece ver appointed for instance in a partition suit 44 Ind Cas 657 An administrator *pendente lite* has all the rights and powers of a general administrator, other than the right of distributing the residue of the testator's estate, and is like the receiver subject to the immediate control of the Court and acts under its direction 22 C 648 As regards powers and duties of *administrator pendente lite*, *vide* 10 C W N 563, 12 C W N 237, 3 M 359, 15 C W N 832

Grants for special purposes

248 [Suc S 219 & Pro S 35] If an executor is appointed for any limited purpose specified in the Will, the probate shall be limited to that purpose, and if he should appoint an attorney or agent to take administration on his behalf the letters of administration, with the Will annexed, shall be limited accordingly

Probate limited to purpose specified in Will

Notes—The appointment of an executor may be either absolute or qualified It may be qualified either (1) as to time or (2) as to a place or (3) as to purpose or subject matter, and (4) the appointment of an executor may be conditional or contingent *Mortimeer*, p 263

249 [Suc S 220 & Pro S 36] If an executor appointed generally gives an authority to an attorney or agent to prove a Will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the Will annexed, shall be limited accordingly

Administration with Will annexed limited to particular purpose

Notes—Where the power given by an executor to his attorney to prove a Will for him is special, and limited to specific property, the grant of administration (with the Will annexed) made to the attorney is limited accordingly (*Tr & Coote Pro Prac 147*)

250 [Suc S 221 & Pro S 37] Where a person dies leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration limited to such property, may be granted to the beneficiary, or to some other person on his behalf

Administration limited to property in which person has beneficial interest

Notes—Th s sec on appl [illegible] person had [illegible] it in trust [illegible] An idol may [illegible] As regards vesting of *shabaitship vide* 16 I A 137=17 C 3, 18 A 227 33 C 507 ; 37 C 179 Under a grant under this section a person cannot dispose of property outside the limits of that grant 4 Bom L R 849, 5 Bom L R 784

251 [Suc S 220 & Pro S 38] When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit and until a final decree shall be made therein and carried into complete execution

Administration limited to suit

Notes—Under this form of administration the grantee has authority to carry on the suit and has no right to receive fruits of it He is complete representative of the estate and a decree obtained against him is binding on every one claiming the estate *In re Dogson* 1 S & T 259

252. [Suc S 223 & Pro S 39.] If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the province within which the Court which has granted the probate or letters of administration exercises jurisdiction, the Court may grant to any person whom it may think fit, being made a p and carry ing

Administration limited to purpose of becoming party to suit to be brought against administrator

Notes—Such a grant is limited for the purpose of a suit to be brought against the executor In such

lynto i, 7 Ves 400

253 [Suc S 224 & Pro S 41] In any case in which it appears necessary for preserving the property of a deceased person the Court within whose jurisdiction any of the property is situate may grant to any person, whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased and to the giving of discharges for debts due to his estate, subject to the directions of the Court

Administration limited to collection and preservation of deceased's property

Notes—It is discretionary with the Court to grant such an administration As regards what is discretion, *vide Sharp* v *Wakefield*, (1891) A C 173, *In re Taylor*, 4 Ch D 160, 22 C W N 74 (P C), 22 C W N 169 (P C)

254 [Suc S 225 & Pro S 41] (1) When a person has died intestate or leaving a Will of which there is no executor willing and competent to act or where the executor is, at the time of the death of such person, resident out of the province and it appears to Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, in ordinary circumstances would be entitled to a grant of administration, the Court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator

Appointment as administrator, of person other than one who, in ordinary circumstances, would be entitled to administration

(2) In every such case letters of administration may be limited or not as the Court thinks fit

Notes—A grant can be made under this section in the exercise of discretionary powers of the Court for the protection and preservation of the estate of the deceased persons 21 C 697 The section applies to a case, where, for some just cause the person who is legally entitled to letters of administration ought to be superseded and the grant made to another person But it is not in the power of the Court acting under this section to direct that some body else who has no present interest in the estate should be associated with the person who under section 218 is legally entitled to letters of administration 21 C 1(4, 12 Bur L T 39 The selection rests with the discretion of the Court *Warwick* v *Greville* (1809) 1 Phill 125 The elements to trator by the Court the estate will be prope ccxliv The discretion acted upon for many ye be exercised where L J 158

Grants with exception

255. [Suc. S. 226 & Pro. S 42] Whenever the nature of the case requires that an exception be made, probate of a Will, or letters of administration with the Will annexed, shall be granted subject to such exception

Probate or administration with Will annexed, subject to exception

Notes—Probate limited to part of the estate cannot be granted in cases where under section 211 the whole estate is vested in the executor 6 B 469 If a particular disposition has the approval of the testator, but another one has not the whole Will need not necessarily be rejected 2 C L J 139, see also 12 Bom L R 569=7 Ind Cas 657 The probate Court has authority to omit from the probate a clause introduced in the Will by fraud without knowledge of the testator *Barton* v *Robins* 2 Phill 455, see also 27 C 521

256 [Suc. S 227. & Pro S 43] Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception

Administration with exception

Notes—*Vide* 5 C 2=4 C L R 490, 2 C 430, 6 C 483, 10 C 554

Grants of the rest

257 [Suc S. 228 & Pro S 44] Whenever a grant with exception of probate, or of letters of administration with or without the Will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased s estate may take a grant of probate or letters of administration as the case may be, of the rest of the deceased s estate

Probate or administration of rest

Notes—T ... name of *Caeterorum* g ... recedes it (*Vide Tr & C* ... re limited to part only c ... purpose have been granted, the person entitled to the grant of administration may take out administration *caeterorum* i e administration of that part of the estate not included in the limited grant *Harris* v *Milburn*, 2 Hagg 62, see also 2 Pat 251, 17 Ind Cas 868 31 C W N 874

Grant of effects unadministered

258 [Suc S 229 & Pro S 45] If an executor to whom probate has been granted has died leaving a part of the testator s estate unadministered a new representative may be appointed for the purpose of administering such part of the estate

Grant of effects unadministered

Notes—Where the sole executor or the sole survivor of the executors to whom the probate has been granted dies, leaving a part of the testator s personal estate unadministered the Court may appoint a new representative for the purpose of administering such part of the estate as is left unadministered Such a grant of administration is known as *de bonis non* grant (*Tr & Coote*, 163, *Mortimer*, 358) In ... executor dies without ... Will which contains no ... ecutor represents the ... as much as here the executor of an executor is not a derivative executor of the original testator 12 B L R O C J 423 27 Ind Cas 84=17 M L T 61

259 [Suc S 230 & Pro S 46] In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made

Rules as to grants of effects unadministered

Notes—The Court in granting administration shall be guided by the same rules as apply to the original grants and shall grant administration to such persons only to whom the original grants might have been made 12 C 375

Administration when limited grant expired and still some part of estate unadministered

260 [Suc S 231 & Pro S 47] When a limited grant has expired by efflux of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estates unadministered, letters of administration shall be granted to those persons to whom original grants might have been made

Notes—Where letters of administration to the deceased's estate was granted to the widow limited during the minority of her infant son, and the son died before attaining majority and before the estate was fully administered, letters of administration *de bonis non* to the estate of the deceased husband may be granted to the widow under this section and her being the heir to the son's estate is no bar to such grant 6 C W N 581

CHAPTER III

Alteration and Revocation of Grants

What errors may be rectified by Court

261 [Suc S 231 & Pro S 48] Errors in names and descriptions or in setting forth the time and place of the deceased's death or the purpose in a limited grant may be rectified by the Court and the grant of probate of letters of administration may be altered and amended accordingly

... committed by which an error ... necessary amendment may be ... ated in the explanation of the ... *Prac* p 180 A word inserted in ... o an error in the printed form of

Procedure where codicil discovered after grant of administration with Will annexed

262 [Suc S 232 & Pro ... and indentification, and the grant may be altered and amended accordingly

... ion such a codicil is added

Revocation or annulment for just cause

263 [Suc S 234 & Pro S 50] The grant of probate or letters of administration may be revoked or annulled for just cause

Explanation—Just cause shall be deemed to exist where—

(*a*) the proceedings to obtain the grant were defective in substance, or

(*b*) the grant was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case, or

(*c*) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant though such allegation was made in ignorance or inadvertently, or

(*d*) the grant has become useless and inoperative through circumstances, or

(*e*) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in

accordance with provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect

Illustrations

(*i*) The Court by which the grant was made had no jurisdiction

been cited

widow, but

intestate

but a Will has since been discovered

(*vi*) Since probate was granted a later Will has been discovered

(*vii*) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will

(*viii*) The person to whom probate was, or letters of administration were granted has subsequently become of unsound mind

application for revocation of ause for revocation 10 C be considered till a case 5, 19 C W N 1108, 40 C

Just cause—The words 'just cause" as explained in this section are exhaustive 24 C 95 They are not merely illustrative 94 Ind Cas 322=7 Lah 270 Mismanagement is not a just cause 16 C W N 880=40 C 50, 24 C 95 The unfitness or incompetency of an executor does not amount to a just cause 21 C 195, see also 6 C 11, 26 B 792, 27 C 387 A grant can be revoked for just cause only by the Court which granted the *probate* or *letters of administration* 4 C 360, 2 N W P H C R 268 But a revocation proceeding cannot be instituted by a probate Court of its own motion 8 C W N 578=31 C 628

Clause (a)—Where a limited grant is made of a portion of the property, such a grant is illegal and as such it may be revoked under this section 3 P L J 415 Where a statement as to the relations of the deceased was made, and misled there by the Court did not direct the issue of special citation on the person who was entitled to intervene the proceeding to obtain the grant was defective in substance 19 C W N 182=31 *Ind Cas* 161 to persons who should be cited the see also 2 C W N 100 2 C W 558 But if a person, knowing what was passing was content to stand by and see his battle fought by some body else in the same interest he should be bound by the result and not allowed to reopen the case *Vide* 19 C W N 882, 21 C L J 287, 11 C 492, 10 C W N 995, 18 C 45, 11 C 492 5 B 638 2 C W N 100, 30 C 528, 14 C W N 1068, 11 Ind Cas 277, 19 C W N 747

Clause (b)—A grant which has been obtained fraudulently is void *ab initio* 10 C W N 673=33 C 713 (F B), 6 C W N 767, 35 C 955, 19 C W N 1108=31 Ind Cas 702 So also a grant which has been obtained in fraud of the creditors is also revocable 16 C W N 1009=15 Ind Cas 686 A mere misstatement in the application for probate as regards the place of abode of a testator does not vitiate a grant 5 C W N 377

Clause (c)—Under this clause a probate can be revoked on the ground of forgery 5 C W N 377 A mere misstatement as regards the date of the testator's death is not a ground for revocation 4 Bur L J 73=A I. R 1925 Rang 236

his section imply
ant, would have
.. . . 50=16 C W N
680; but see 23 C W N 763

Clause (e)—It must be shown that the inventory and accounts were withheld wilfully and unreasonably 51 Ind Cas 561 So also it is not sufficient that the inventory or accounts should be incorrect but it should be untrue in material respects 4 Bom L R 978, 26 B 79?=4 Bom L R 637, 9 C W N 190, 34 Ind Cas 435

CHAPTER IV

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION

Jurisdiction of District Judge in granting and revoking probates, etc

264 [Suc S 235 & Pro S 51] (1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district

(2) Except in cases to which section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay, and the province of Burma, shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person receive applications for probate or letters of administration until the Local Government has, by a notification in the local official Gazette, authorised it so to do

Notes—In Assam, the Judicial Commissioner is vested with the jurisdiction of the District Judge as regards granting of probate or letters of administration 12 W R 424 The functions of the District Judge may also be delegated to the Additional District Judge 78 Ind Cas 701=A I R (1924) Pat 593=3 Pat 607 In Bombay an Assistant Judge has jurisdiction 32 B 634=10 Bom L R 924

Sub section (2)—*Vide* 33 C 116, 37 C 224, 24 M 120 6 B 452

Power to appoint Delegate of District Judge to deal with non contentious cases

265 [Suc S 235 A & Pro S 52] (1) The High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non contentious cases, within such local limits as it may prescribe

Provided that in the case of High Courts not established by Royal Charter, such appointment shall not be without the previous sanction of the Local Government

(2) Persons so appointed shall be called "District Delegates"

Notes—This section contains by implication ample warrant for the delegation

District Judge's powers as to grant of probate and administration

266 [Suc. S 236 & Pro S 53] The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith as are by law vested in him, in relation to any civil suit or proceeding pending in his Court

Notes—Under the general provisions of the C P Code the probate Court can appoint a receiver 17 B 686 So also an appeal lies against an order of the District Judge 21 C 539, see also 27 C 5 Although a probate proceeding is not a suit it takes the form of a suit 20 C 888.

267 [Suc S 237 & Pro S 54] *District Judge may order person to produce testamentary papers* (1) The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person

(2) If it is not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing the Court may direct such person to attend for the purpose of being examined respecting the same

(3) Such person shall be bound to answer truly such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit and had made such default

(4) The cost of the proceeding shall be in the discretion of the Judge

Notes —Under this section the Court can pass an order even when a suit is not pending 21 B 75 The Court can pass an order in order to enable the applicant to take out copies of the Will 1 B 114

268 [Suc S 238 & Pro S 55] *Proceedings of District Judge's Court in relation to probate and administration* The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided be regulated so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908

Notes —Application for probate should be dealt with as a suit 51 C 745=19'4 Cal 864, 6 C W N cxlvii, 18 B 237 The Civil Procedure Code, must, therefore so far as it can be made applicable govern non contentious cases also 8 C 880=11 C L R 190 The course of procedure is also to be followed in a case where an … was duly … is sought … C W N … s applica… r cannot … uld make … see also 6 Ind Cas 912, 3 C W N 617, 72 P R 1894, 31 C 357 Order XXXII of Act V of 1908 is applicable to a probate proceeding 27 C 350 An order staying an execution of an order granting a probate can be granted 5 C W N 789 So also a review of a judgment of a Probate Court under section 114 C P Code is competent 37 A 380=13 A L J 441 A grant of temporary injunction under the provisions of the C P Code can be made by a Probate Court 19 C W N 205 The provisions of Order XI of the C P Code is applicable to such proceedings 23 C L J 480

269 [Suc S 239] *When and how the District Judge to interfere for protection of property* (1) Until probate is granted of the Will of a deceased person, or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage, and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the property

(2) This section shall not apply when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to any part of the property of an Indian Christian who has died intestate

Notes—In cases which fall under clause (2) a receiver may be appointed under the general provisions of the Civil Procedure Code 17 B 388 The rule of the Court of Chancery that a receiver will not be appointed against an executor unless gross misconduct was shown, is not applicable to the case of an executor of the Will of a Mahomedan 19 B 83

270 [Suc S 240 & Pro S 56] *When probate or administration may be granted by District Judge* Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate as the case may be, at the time of his decease, had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge

Notes—If it is appears by verified petition that the deceased at the time of his death had a fixed place of abode or any property movable or immovable within the jurisdiction of the Judge, the Judge can grant probate of the Will or letters of administration to the estate of the deceased 8C 570, 17 B 689, 24 M 120 As regards the meaning of the word 'residence, *vide* 48 C 577 18 C W N 1050, 2 Bom L R 605, 3 [illegible], Coryton p 152, 8 C L R 11 [illegible], 53 P L R 1902, 25 B 176 [illegible] d Cas 745, 20 B 607, 9 B 241, 5 C W N 377

271 [Suc S 241 & Pro S 57] *Disposal of application made to Judge of district in which deceased had no fixed abode* When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district or, where the application is for letters of administration to grant them absolutely, or limited to the property within his own jurisdiction

Notes—An executor whose testator has left property in British India is entitled to probate of the Will in the Court in British India which has jurisdiction in the case or where there is more than one such Courts is the most convenient of them 21 B 607, see also 33 C L J 386, 1 Bom L R 666

272 [Suc S 241A & Pro S 58] *Probate and letters of administration may be granted by Delegate* Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition, verified as hereinafter provided that the testator or intestate, as the case may be at the time of his death had a fixed place of abode within the jurisdiction of such Delegate

Notes—Unless a caveat is entered a proceeding is not contentious 24 C W N 541, 24 C W N 538, 22 B 261, 39 C L J 569=1925 Cal 75

273 [Suc S 242 & Pro S 59] *Conclusiveness of probate or letters of administration* Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the province in which the same is or are granted, and shall be conclusive, as to the representative title against all debtors of the deceased and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted

Provided that probates and letters of administration granted—

(*a*) by a High Court, or

(*b*) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant have like effect throughout the whole of British India

Notes —Before the enactment of the proviso the High Court of Calcutta had no jurisdiction to grant probates of Wills which would entitle the grantee to administer assets in the Punjab 1 B L R O C 3, 1 B L R 19, 1 C 52 The question of representation and administration is conclusively decided by a Probate Court 12 C I J 71, 34 C L J 487, 38 B 427 11 Ind Cas 235, 15 C W N 1021, 26 C 888, 25 C 354, 16 M 380

274 [Suc S 242A & Pro S 60] (1) Where probate or letters of administration has or have been granted by a High Court or District Judge with the effect referred to in the proviso to section 273, the High Court or District Judge shall send a certificate thereof to the following Courts namely·

Transmission to High Courts of certificate of grants under proviso to section 273

(*a*) when the grant has been made by a High Court, to each of the other High Courts,

(*b*) when the grant has been made by a District Judge, to the High *Court to which such District Judge is subordinate and to each of the other* High Courts

(2) Every certificate referred to in sub-section (1) shall be made as nearly as circumstances admit in the form set forth in Schedule IV, and such certificate shall be filed by the High Court receiving the same

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 276 and 278, to be situate within the jurisdiction of a District Judge in another province, the Court required to send the certificate referred to in sub section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same

275 [Suc S 243 & Pro S 61] The application for probate or letters of administration, if made and verified *in the* manner hereinafter provided shall be conclusive for the purpose of authorising the grant of probate or administration, and no such grant shall be impeached by reason only that the testator *or intestate had no fixed place of abode or no property within the district* at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court

Conclusiveness of application for probate or administration if properly made and verified

Notes —It is clear from a consideration of this section together with sections [illegible] of adm nis [illegible] statements [illegible] reference [illegible] pon it [illegible]

B 673

276 [Suc S 244 & Pro S 62] (1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made with the Will or, in the cases mentioned in sections 237, 238, and 239, a copy draft or statement of the contents thereof, annexed, and stating—

Petition for probate

(*a*) the time of the testator s death,

(*b*) that the writing annexed in his last Will and testament,

(c) that it was duly executed,

(d) the amount of assets which are likely to come to the petitioner's hands, and

(e) when the application is for probate, that the petitioner is the executor named in the Will.

(2) In addition to these particulars, the petition shall further state,—

(a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge, and

(b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another province the petition shall further state the amount of such assets in each province and the District Judge within whose jurisdiction such assets are situate

Notes —The term "assets" means and includes property of a deceased person [illegible] C 65, [illegible] to come [illegible] B 139 [illegible] A C J [illegible] obtained by the deduction of debts and expenses from the gross value 20 C W N 591, 40 A 229, 24 Ind Cas 823, but see 17 C W N 21

277. [Suc S 245 & Pro S 63] In cases wherein the Will, copy or draft, is written in any language other than English or than that in ordinary use in proceedings before the Court there shall be a translation thereof annexed to the petition by a translator of the Court if the language be one for which a translator is appointed, or, if the Will, copy or draft, is in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner, namely —

In what cases translation of Will to be annexed to petition Verification of translation by person other than Court translator

"I (*A B*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof"

Notes —According to English practice the translator unless his competency is vouched for by his official position must file an affidavit verifying the translation and stating his qualification *Mortimer Pro Prac*, p 485

278 [Suc. S 246 & Pro S 64] (1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating—

Petition for letters of administration

(a) the time and place of the deceased's death,

(b) the family or other relatives of the deceased, and their respective residences,

(c) the right in which the petitioner claims,

(d) the amount of assets which are likely to come to the petitioner's hands,

[illegible] ict Judge, that the deceased at [illegible] le, or had some property, situate

[illegible] Delegate, that the deceased at [illegible] ode within the jurisdiction of such Delegate.

(2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another province, the petition shall further state the amount of such assets in each province and the District Judge within whose jurisdiction such assets are situate

Notes —The term "assets" means and includes property of deceased person chargeable with and applicable to the payment of his debts and legacies It would therefore include immovable property 25 C 65, 1 B H C R 83 When the deceased and the applicant are members of a joint Hindu family the latter is not competent to apply for letters of administration 56 P R 1919=51 Ind Cas 651, 4 O C 224, but see 33 M 93 The Court has no right to go into the question of title in a probate proceeding 5 Pat L J 107, 17 C W N 615 The applicant is bound to state the names of the family members 7 P R 1902

279 [Suc S 246A & Pro S 65] (1) Every person applying to any of the Courts mentioned in the proviso to section 273 for probate of a Will or letters of administration of an estate intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by section 276 and section 278, that to the best of his belief no application has been made to any other Court for a probate of the same Will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

Addition to statement in petition etc, for probate or letters of administration in certain cases

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made and the proceedings (if any) had thereon

(2) The Court to which any such application is made under the proviso to section 273 may, if it thinks fit, reject the same

280 [Suc S. 247. & Pro S 66] The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner, namely —

Petition for probate, etc, to be signed and verified

"I (*A B*) the petitioner in the above petition, declare that what is stated *therein is true to the best* of my information and belief".

Notes —The Administrator General does not verify, his signature is sufficient 20 C 879, 26 C 404

281. [Suc S 248 & Pro S 67] Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when *procurable*) in the manner or to the effect *following* namely —

Verification of petition for probate by one witness to Will.

'I (*C D*), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*or* that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence)

Notes —The provision about the verification of an application for probate by an attesting witness is directory and not mandatory and an omission of the verification is not fatal to the probate proceeding This section requires such verification if the witness is procurable 64 Ind Cas 940=1923 Nag 41

282 [Suc S 249 & Pro S 68] If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification *knows or believes to be false*, such person shall be deemed to have committed an offence under section 193 of the Indian Penal Code *

Punishment for false averment in petition or declaration

* Act XLV of 1860

Powers of District Judge

283 [Suc S 250 & Pro S 69] (1) In all cases the District Judge or District Delegate may, if he thinks proper,—

(*a*) examine the petitioner in person, upon oath,

(*b*) require further evidence of the due execution of the Will or the right of the petitioner to the letters of administration as the case may be,

(*c*) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration

(2) The citation shall be fixed up in some conspicuous part of the Court house, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation

Notes—A non contentious proceeding is not a suit but is a miscellaneous proceeding 10 C W N xcv=3 C L J 37 (n) 7 C L R 587, 23 W R 103, 39 C L J 569 In a contentious proceeding probate may be granted in common form in consequence of a compromise between the defendants, resulting in the withdrawal of opposition 14 C W N 1068=7 Ind Cas 740, 2 Moo P C 88 Whenever a Will has been prepared under circumstances which raise a well grounded suspicion that it does not express the mind of the testator, the Court ought not to pronounce in favour of it unless the suspicion is removed 59 Ind Cas 535, 34 C L J 373=26 C W N 113 It must be proved that the Will has been executed in accordance with the provisions of section 63 otherwise no probate can be granted 22 M 345 6 C L J 453 15 C W N 729, 31 C 357 2 C W N 1321 6 C L R 176 The *onus* is upon the executor to establish that the deceased had sound disposing mind at the time when he executed the Will 19 C W N 747 25 Ind Cas 581 When the testator is an invalid and his mind is enfeebled the testamentary capacity must be vigorously proved 41 C L J 300=87 Ind Cas 534, 23 Bom L R 1068, 83 Ind Cas 1017, 1924 Lah 541

Caveats against grant of probate or administration

284 [Suc S 251 & Pro S 70] (1) Caveats against the grant of probate or administration may be lodged with the District Judge or District Delegate

(2) Immediately on any caveat being lodged with any District Delegate, ... Judge

... *with the District Judge, a copy* ... if any, within whose jurisdiction ... of abode at the time of his death and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same

Form of caveat

(4) The caveat shall be made as nearly as circumstances admit in the form set forth in Schedule V

After entry of caveat no proceeding taken on petition until after notice to caveator

285 [Suc S 253 & Pro S 71] No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court may think reasonable

Notes—A person can oppose a grant of probate or letters of administration even without lodging caveat under this section 6 Ind Cas 650=46 P W R 1910, 1 L B R 212, 20 C W N 787=36 Ind Cas 38, but see 10 C L R 550 A caveat is a precautionary measure 20 C W N 787=36 Ind Cas 38 Caveat under this section should be in the form prescribed in Schedule V 82 Ind Cas 972=3 Bur L J 65 When a caveat is filed of a ... he proceed ings take the form of a regular suit 16 C a party has been cited, a petition of objecti necessary for a caveat 6 Ind Cas 650=19 see 10 C L R 550

286 [Suc S 253A & Pro S 73] A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court

District Delegate when not to grant probate or adminis tration

Explanation—"Contention" means the appearance of any one in person or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding

Notes—The essence of contention is appearance with a view to oppose the proceedings 39 C L J 569, 29 M 426, 31 C 745, 29 A 339 31 C 186, 5 Pat L J 107 The effect of withdrawal of a pleader for the objector is not to convert the contentious proceeding which assumed the character of a suit into non conten tious proceeding 39 C L J 569

287 [Suc S 253B & Pro S 74] In every case in which there is no ... ct Delegate ... of admi ... granted or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration the District Delegate may if he th... in question to the District ... proceed in the matter of ... the Judge may seem neces... District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge

Power to transmit statement to District Judge in doubtful cases where no contention

288 [Suc S 253C & Pro S 75] In every case in which there is con tention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition with any documents which may have been filed there with, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do, and, in that case, the same shall be sent by him to the District Judge

Procedure where there is contention or District Dele gate thinks probate or letters of administration should be refused in his Court

289 [Suc S 254 & Pro S 76] When it appears to the District Judge or District Delegate that probate of a Will should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VI

Grant of probate to be under seal of Court

Notes—When on an appl...

... C 195 A probate can be refused on the ground of legal incapacity 20 A 189

290 [Suc S. 255 & Pro S 77.] *Grant of letters of administration to be under seal of Court* When it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VII

Notes—*Vide* 40 C 75=18 Ind Cas 907

291. [Suc S 256 & Pro S 78] *Administration bond* (1) Every person to whom any grant of letters of administration, other than a grant under section 241, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person—

(*a*) the exception made by sub section (1) in respect of a grant under section 241 shall not operate,

(*b*) the District Judge may demand a like bond from any person to whom probate is granted

Notes—The bond is taken with a view to ensure the administration of the ... a bond with sureties ... the neccessity arises ... Cas 936=47 C 115 ... The section as it now stands does not require an executor, who is not a Hindu, Muhammadan, Buddhist Sikh or Jaina to file a security bond In such a case the Court has a discretion under sub clause (*b*) of clause (2) to require security even from an executor 1 C L J 180, 47 C 115=29 C L J 496=23 C W N 763=61 Ind Cas 936 As regards the amount of security, *Vide* 6 C L J 453 No appeal lies against an order made by a District Judge as to security on the ground that such security is insufficient 20 C 245, 1 C 127 The Court can not discharge a surety once appointed under this section 28 M 161, 33 M 373, 31 A 56 This view is in accord with the English law L R 1 P D 76 But the view taken by the Madras High Court and Allahabad High Court is opposed to the view taken by the Calcutta High Court and the Punjab Chief Court 6 C W N 7, 41 C 115=23 C W N 763, 52 P R 1902=89 P L R 1902, 2 P W R 1922 But a surety can not get a discharge by merely alleging misconduct on the adminstrator's part A I R (1925) Cal 158 Where an order, requiring a person to whom letters of administration have been granted to give security under this section is passed independently of the order granting letters of administration, and the grant is not made subject to furnishing security, the grant can not be revoked owing to the failure of the applicant to furnish security 86 Ind Cas 563=7 Lah L J 89

292 [Suc S 257 & Pro S 79] *Assignment of administration bond* The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that ... or otherwise, as the Court may think ... administrators who shall ... or their own name or ... m or them instead of to the ... r thereon, as trustees for all ... in respect of any breach thereof

... bond if an account and inven- ... time 27 Ind Cas 849=17 M ... f legacy when the administrator ... non payment of a particular

Notes—A person can oppose a grant of probate or letters of administration even without lodging caveat under this section 6 Ind Cas 650=46 P W R 1910, 1 L B R 212, 20 C W N 787=36 Ind Cas 38, but see 10 C L R 550 A caveat is a precautionary measure 20 C W N 787=36 Ind Cas 38 Caveat under this section should be in the form prescribed in Schedule V 82 Ind Cas 972=3 Bur L J 65 When a caveat is fil[illegible] proceedings take the form of a regular suit 16 C W [illegible] a party has been cited a petition of objection [illegible] necessary for a caveat 6 Ind Cas 650=1910 F[illegible] see 10 C L R 550

286 [Suc S 253A & Pro S 73] *District Delegate when not to grant probate or administration* A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court

Explanation—'Contention' means the appearance of any one in person or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding

Notes—The essence of contention is appearance with a view to oppose the proceedings 39 C L J 569, 29 M 426, 31 C 745 29 A 339, 31 C 186, 5 Pat L J 107 The effect of withdrawal of a pleader for the objector is not to convert the contentious proceeding which assumed the character of a suit into non-contentious proceeding 39 C L J 569

287 [Suc S 253B & Pro S 74] *Power to transmit statement to District Judge in doubtful cases where no contention* In every case in which there is no contention but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted or when any question arises in relation to the grant, or application for the [illegible] the District Delegate [illegible] matter in question to th[illegible] egate to proceed in the m[illegible] ns as to the Judge may se[illegible] by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge

288 [Suc S 253C & Pro S 75] *Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court* In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with *any documents which may have been filed* therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purposes of justice to impound the same, which he is hereby authorised to do, and, in that case, the same shall be sent by him to the District Judge

289 [Suc S 254 & Pro S 76] *Grant of probate to be under seal of Court* When it appears to the District Judge or District Delegate that probate of a Will should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VI

Notes—When on an application for probate by a person appointed executor by [illegible]

Grant of letters of administration to be under seal of Court

290 [Suc S. 255 & Pro S 77] When it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed, should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VII

Notes —*Vide* 40 C 75=18 Ind Cas 907

Administration bond

291. [Suc S 256 & Pro S 78] (1) Every person to whom any grant of letters of administration, other than a grant under section 241, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person—

(*a*) the exception made by sub section (1) in respect of a grant under section 241 shall not operate,

(*b*) the District Judge may demand a like bond from any person to whom probate is granted

Notes —The bond is taken with a view to ensure the administration of the [illegible] n a bond with sureties [illegible] the neccessity arises [illegible] Cas 936=47 C 115 [illegible] The section as it now stands does not require an executor, who is not a Hindu, Muhammadan, Buddhist Sikh or Jaina to file a security bond In such a case the Court has a discretion under sub clause (*b*) of clause (2) to require security even from an executor 1 C L J 180, 47 C 115=29 C L J 496=23 C W N 763=61 Ind Cas 936 As regards the amount of security, *Vide* 6 C L J 453 No appeal lies against an order made by a District Judge as to security on the ground that such security is insufficient 20 C 245, 1 C 127 The Court can not discharge a surety once appointed under this section 28 M 161, 33 M 373, 31 A 56 This view is in accord with the English law L R 1 P D 76 But the view taken by the Madras High Court and Allahabad High Court is opposed to the view taken by the Calcutta High Court and the Punjab Chief Court 6 C W N 7, 41 C 115=23 C W N 763, 52 P R 1902=89 P L R 1902, 2 P W R 1922 But a surety can not get a discharge by merely alleging misconduct on the administrator's part A I R (1925) Cal 158 Where an order, requiring a person to whom letters of administration have been granted, to give security under this section is passed independently of the order granting letters of administration, and the grant is not made subject to furnishing security, the grant can not be revoked owing to the failure of the applicant to furnish security 86 Ind Cas 563=7 Lah L J 89

Assignment of administration bond

292 [Suc S 257 & Pro S 79] The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that [illegible] persons interested, the full amount recoverable in respect of any breach thereof

[illegible] bond if an account and inven- [illegible] time 27 Ind Cas 849=17 M [illegible] of legacy when the administrator [illegible] non payment of a particular

debt is not considered as such a breach *Sandry v Mitchell*, 3 B & S 405 This section is not confined to private individuals only and an administration bond may be assigned to the Administrator General 33 C 713=10 C. W. N 673

Time for grant of probate and administration.

293 [Suc. S 258. & Pro S 80] No probate of a Will shall be granted until after the expiration of seven clear days and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death.

Notes—According to the English practice the earliest date at which the probate may issue is the eighth day after the death of the testator *Mortimer*, p 442

Filing of original Wills of which probate or administration with Will annexed granted

294 [Suc S. 259 & Pro S 81] (1) Every District Judge, or District Delegate, shall file and preserve all original Wills, of which … with the … among the …

(2) … servation and inspection of the Wills so filed.

Notes—When the Will is not filed as prescribed by this section, the proceedings to obtain the grant is defective in substance and the grant should be annulled under section 263 37 P L R 1902=1 P. R 1902

Procedure in contentious cases

295 [Suc S 261 & Pro S 83] In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant

Notes—According to this section the proceedings incontentious cases should under the Civil Procedure Code, take as far as possible the form of a regular suit. 72 I R 1894 In such a case the petitioner for probate or letters of administration … the defendant. … 75=39 C L J … istration which … cease to be so … This section … e in contested probate proceedings embodies the important qualification that these are to apply only in so far as the circumstances of the case will admit and the proceedings is to take … R 176; 20 C 888, … the question of … or the purpose of … f a party to the … 9=82 Ind Cas … n of title to the properties has to be determined 3 Ind Cas 719=5 L B R 78, 43 Ind Cas. 723=49 P. R 1918=34 P W R 1918, 11 L B R 331=68 Ind Cas 671, 12 B 169, 18 B 749

Surrender of revoked probate or letters of administration

296 [Suc S 333 & Pro S 157] (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant

(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punishable with fine which may extend to

one thousand rupees or with imprisonment for a term which may extend to three months, or with both

Notes —Where a grant has been lost or mislaid the Court will revoke it after taking an undertaking from the grantee that if found he would bring the grant to the registry and that he would not act upon it *In the goods of Carr* 1 S & T 111 Such is also the case when it is in the hands of solicitor who has a lien over it for his costs *Burness* v *Durham* (1866) 1 P D 728

297 [Suc S 262 & Pro S 84] When a grant of probate or letters of administration is revoked, all payments *bona fide* made to any executor or administrator under such grant before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same, and the executor or administrator who has acted under any such revoked grant may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration may afterwards be granted might have lawfully made

Payment to executor or administrator before probate or administration revoked

Notes —The grantee of a probate or letters of administration fully represents the estate of the deceased and any payment made to him affords full indemnity against the claim of any other party 10 C W N 422, 33 C 713 = 10 C W N

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V N 241 = 27 Ind Cas 715

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the first and the person to whom such grant has been made cannot b constituted an executor so as to be empowered to exercise any of the powers conferred on the executor under the Act But any lawful payments made by a person to whom probate of such a Will has been granted but subsequently revoked may be reimbursed out the estate of the deceased under this section 6 C W N 787

298 [Pro S 85] Notwithstanding anything hereinbefore contained, it shall where the deceased was a Muhammadan Buddhist or exempted person or a Hindu, Sikh or Jaina to whom section 57 does not apply, be in the discretion of the Court to make an order refusing for reasons to be recorded by it in writing to grant any application for letters of administration made under this Act

Power to refuse letters of administration

Notes —The effect of this section apparently is that in cases to which clause (1) of section 57 applies the Court must grant letters of administration with the Will anne

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299 [Suc S 26 & Pro S 26] Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 applicable to appeals

Appeals from orders of District Judge

Scope of the section —This sect on applies to orders made by a District Judge by virtue of powers conferred on him by that Act An order setting aside the

be sa d to be an order made by

tter of procedure and is governed

appeal from an order allowing an

appearance 20 Ind Cas 281 = 6

debt is not considered as such a breach *Sandry* v *Mitchell*, 3 B & S 405 This section is not confined to private individuals only and an administration bond may be assigned to the Administrator General 33 C 713=10 C W N 67

293 [Suc. S 258. & Pro S 80] No probate of a Will shall be granted until after the expiration of seven clear days and no letters of administration shall be granted until after the expiration of fourteen clear days from the day of the testator or intestate's death

Time for grant of probate and administration

Notes—According to the English practice the earliest date at which the probate may issue is the eighth day after the death of the testator *Mortimer*, p 442

294 [Suc S 259 & Pro S 81] (1) Every District Judge, or District Delegate, shall file and preserve all original Wills of which probate or letters of administration with the Will annexed may be granted by him among the records of his Court until some public registry for Wills is established

Filing of original Wills of which probate or administration with Will annexed granted

(2) The local Government shall make regulations for the preservation and inspection of the Wills so filed.

Notes—When the Will is not filed as prescribed by this section the proceedings to obtain the grant is defective in substance and the grant should be annulled under section 263 37 P L R 1902=1 P R 1902

295 [Suc S 261 & Pro S 83] In any case before the District Judge in which there is contention the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant

Procedure in contentious cases

Notes [illegible] proceedings in contentious cases should [illegible] as possible the form of a regular suit 72 [illegible] for probate or letters of administration [illegible] poses the grant shall be the defendant 16 Bom L R 5=38 B 309=23 Ind Cas 325, see also 1925 Cal 75=39 C L J 569 (572) A proceeding for a grant of probate or letters of administration which *becomes contentious by the appearance of the opposite party does not cease to be so* by the withdrawal of the pleader of the defendant 39 C L J 569 This section which makes the provisions of the Civil Procedure Code applicable in contested probate proceedings embodies the important qualification that these are to apply only in so far as the circumstances of the case will admit and the proceedings is to take [illegible] 176; 20 C 8?8 [illegible] the question of [illegible] the purpose of [illegible] a party to the [illegible] 9=82 Ind Cas [illegible] of title to the properties has to be determined 3 Ind Cas 719=5 L B R 78, 43 Ind Cas 723=49 P R 1918=34 P W R 1918, 11 L B R 331=68 Ind Cas 671, 12 B 169, 18 B 749

296 [Suc S 333 & Pro S 157] (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant

Surrender of revoked probate or letters of administration

(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punishable with fine which may extend to

one thousand rupees, or with imprisonment for a term which may extend to three months, or with both

Notes.—Where a grant has been lost or mislaid the Court will revoke it, after taking an undertaking from the grantee that if found he would bring the grant to the registry and that he would not act upon it *In the goods of Carr* 1 S & T 111 Such is also the case when it is in the hands of solicitor who has a lien over it for his costs *Burness* v *Durham*, (1866) 1 P D 728

297. [Suc S 262 & Pro S 84] When a grant of probate or letters of administration is revoked, all payments *bona fide* made to any executor or administrator under such grant before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same, and the executor or administrator who has acted under any such revoked grant may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration may afterwards be granted might have lawfully made

Payment to executor or administrator before probate or administration revoked

Notes—The grantee of a probate or letters of administration fully represents the estate of the deceased and any payment made to him affords full indemnity against the claim of any other party 10 C W N 422, 33 C 713=10 C W N 673 A purchaser of property sold under a grant of probate or letters of administration, subsequently revoked, in order to discharge a debt which the true executor was compellable to pay, acquires an indefeasible title 19 C W N 241=27 Ind Cas 715 Where probate has been granted to a universal legatee by mistake it is invalid from the first and the person to whom such grant has been made cannot be constituted an executor so as to be empowered to exercise any of the powers conferred on the executor under the Act But any lawful payments made by a person to whom probate of such a Will has been granted but subsequently revoked may be reimbursed out the estate of the deceased under this section 6 C W N 787

298 [Pro S 85] Notwithstanding anything hereinbefore contained, it shall, where the deceased was a Muhammadan, Buddhist, or exempted person, or a Hindu, Sikh or Jaina to whom section 57 does not apply, be in the discretion of the Court to make an order refusing for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act

Power to refuse letters of administration

[illegible]

for letters of administration, no such discretion is given in regard to an application for probate by a person selected by a testater for the administration of his estate 20 A 189, 21 C 195 According to *Philips* and *Trevelyan* the words 'letters of administration include letters of administration with the Will annexed' *Phils & Tr Hindu Wills*, 2nd Ed p 220, but see 45 Ind Cas 974=11 P W R 1918

299 [Suc S 26 & Pro S 26] Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals

Appeals from orders of District Judge

Scope of the section—This section applies to orders made by a District Judge by virtue of powers conferred on him by that Act An order setting aside the [illegible] be said to be an order made by [illegible] tter of procedure and is governed [illegible] appeal from an order allowing an [illegible] appearance 20 Ind Cas 281=6

Bur L T 89 2 C L R 589 Under this section an appeal lies to the High Court from an order made by a District Judge by virtue of the powers conferred upon him by the Act under the rules contained in C P Code applicable to appeals 94 P W R 1910=70 P R 1910=7 Ind Cas 710, 20 C 245, 21 C 539, 27 C 5, 11 C W N

l orders made by the s conferred upon him ules of procedure la d 237 A w de interpre section 80 Ind Cas 746 The word 'hereby means the whole Act 28 C 149=5 C W N 448 20 C W N 28 There is an appeal against every order by a District Judge under the Act 20 C W N 28, 2 C L R 589, 17 C 48, 20 C 245, 21 C 539, 39 C 563= 16 C W N 662 16 C W N 1093 An appeal lies to the Privy Council when the value of the estate is Rs 10000 24 C 30

300 [Suc S 264 & Pro S 87] (1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge

Concurrent jurisdiction of the High Court

(2) [Pro S 2] Except in cases to which section 57 applies no High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta Madras and Bombay, and the province of Burma shall, where the deceased is a Hindu Muhammadan, Buddhist, Sikh or Jaina or an exempted person receive application for probate or letters of administration until the Local Government has by a notification in the local official Gazette, authorised it so to do

Notes—Though a District Judge e probate under section 611 of the C P Code nder the s r as if R 228, 5 C 756=7 C L R 228 The expression ction is not merely confined to the appellate includes original jurisdiction 37 C 224=5 Ind Cas 1003; 5 C W N 377 Letters of administration granted by District Judge cannot be amended by the Chief Court, so as to give operation beyond the Local limits of such District Judge's jurisdiction 1 P R 1902

301 [Suc S 264A & Pro S 87A] The High Court may on application made to it, suspend remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate

Removal of executor or administrator and provision for successor

Notes—The Court has power to discharge an executor on his own application if a proper case is made out An executor so discharged remains liable for any thing he has done or left undone while an executor—it only relieves him from the duties of office from the date of discharge 29 B 189

302 [Suc S 264 & Pro S 87B] Where probate or letters of administration in respect of any estate has or have been granted under this Act the High Court may, on application made to it give to the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof

Directions to executor or administrator

Notes—The High Court may give directions to any private executor or administrator other than the Administrator General acting officially 57 Ind Cas 116= 2 Bom L R 396

CHAPTER V

OF EXECUTORS OF THEIR OWN WRONG.

303 [Suc S 265.] Executor of his own wrong A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no right full executor or administrator in existence, thereby makes himself an executor of his own wrong

Exceptions – (1) Intermeddling with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property, does not make an excutor of his own wrong

(2) Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong

Illustrations

(*i*) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy or receives payment of the debts of the deceased *He is an executor of his own wrong*

in his lifetime to collect his s become aware of his death ts done after he has become

uch He is an executor of his own wrong

Application to Hindus etc —In the original Bill No 4 of 1923, clause 302 was inserted which ran as follows "Nothing in this chapter shall apply when the deceased was a Hindu, Muhommadan, Buddhist, Sikh or Jaina or an exempted person" Accrding to the framers of the Bill this clause was thought necessary as the provisions of Act X of 1865 relating to "executors of their own wrong' had not been included in Act V of 1881 The reason of the omission is the omitted this clause as the chapter apply to Hindus and other specified see also 46 M 190=43 M L J 486=70 Ind Cas 687 (F B) 42 C L J 280=1926 Cal 1 at p 50, 10 C W N 566, 35 C 276=12 C W N 237, 17 C 620, 2 Ind Jur N S 224, 21 B 400, 18 B 337, 7 M 586, 28 M 351, 21 C 311

Executor de son tort —"If one who is neither executor nor administrator

825 A person who claims under a hostile title cannot be made executor of his own wrong 65 L T 709 But the claim must be *bona fide* 43 M L J 486=70 Ind Cas 704 (F B) The intermeddling must be before the period of grant otherwise he could only be a trespasser 21 B 400

304 [Suc S 66] Liability of executor of his own wrong When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in due course of administration

Notes —This section is not exhaustive. It deals with some of the liabilities and does not deal with all the rights and liabilities of an executor *de son tort* 1927 Cal 1 The liability of an executor *de son tort* extends to the amount of the assets received but where he has mingled this with his own so as to make it impossible to

[illegible] he Court may for lack of ev dence treat the [illegible] 3 M 359, 8 C W N 843, 2 Ind Jur N S [illegible] C 1044, 1926 Cal 1, but see 21 B 424, 17 M 480, 4 C W N 405 An executor *de son tort* cannot plead *plene administravit* if he retains the assets for his own debt 28 M 351 The argument that an excutor *de son tort* cannot be sued by a legatee, at any rate in the absence of the legal personal representative, applies only where there is any legal representative But when a representative of the deceased or a person in possession of the estate is proved to have received enough to pay all demands against the estate in full no such rule can apply 1922 Mad 457=43 M L J 486=31 M L T 221

CHAPTER VI

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR

In respect of causes of action surviving deceased and rents due at death

305 [Suc S 67 & Pro S 88] An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same power for the recovery of debts as the deceased had when living

Notes—It is competent to the executors of the Will of a deceased Muhammadan to sell his property without taking probate or obtaining the consent of his heirs 24 Bom L R 733=(1922) Bom 392 33 C 116

Demands and rights of action of or against deceased survive to and against executor or administrator

306. [Suc S 68 & Pro S 89.] All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease survive to and against his executors or administrators except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory

Illustrations

(*i*) A collision takes place on a railway in consequence of some neglect or default of an official and a passenger is severely hurt but not so as to cause death He afterwards dies without having brought any action The cause of action does not survive

(*ii*) A sues for divorce A dies The cause of action does not survive to his representative

Notes—The personal representatives are liable so far as they have assets on all covenants and contracts of the deceased broken in his life time *Broom's Legal Maxim*, p 683 The cause of action of a malicious prosecution does not survive to the legal representatives 52 Ind Cas 348, 13 B 677, 17 Ind Cas 226 31 Ind Cas 4 38 Ind Cas 823; 31 M L J 77 44 M 357 (F B) 47 B 716 but see 31 C 993=8 C W N 745 This section has no reference to criminal prosecution but is confined to civil actions only 65 Ind. Cas 549=44 M 417, 13 B 600 4 Ind Cas 24=3 A 606 2 Weir 418 A I R (19[illegible]) Lah 277; but see 40 Ind Cas 1008, 52 Ind Cas 797

Power of executor or administrator to dispose of property

307 [Suc S 69 & Pro S 90] (1) Subject to the provisions of sub [illegible] or has [illegible] in part, in such manner as he may think fit

Illustrations

(*i*) The deceased has made a specific bequest of part of his property The executor not having assented to the bequest sells the subject of it The sale is valid

(*ii*) The executor in the exercise of his discretion mortgages a part of the immovable estate of the deceased The mortgage is valid

(2) If the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, the general power conferred by sub section (1) shall be subject to the following restrictions and conditions, namely.—

(*i*) The power of an executor to dispose of immovable property so vested in him is subject to any restriction which may be imposed in this behalf by the Will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction to dispose of any immovable property specified in the order in a manner permitted by the order

(*ii*) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(*a*) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property for the time being vested in him under section 211, or

(*b*) lease any such property for a term exceeding five years

(*iii*) A disposal of property by an executor or administrator in contravention of clause (*i*) or clause (*ii*), as the case may be, is voidable at the instance of any other person interested in the property

(3) Before any probate or letters of administration is or are granted in [illegible] a copy of sub section (*i*) and [illegible]

(4) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by sub-section (3) not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section

Notes —An executor, although he has power to dispose of property under sub section (1) in such manner as he thinks fit must be able to give reasons for it 28 C L J 141 Apart from any special power given by a Will to an executor, money borrowed by him on a promissory note for the benefit of an estate is not a charge upon the estate 7 C W N 104, 8 C W N 135, 11 Bom L R 250, [illegible] it first obtaining [illegible] terms in which [illegible] or under a Will [illegible] s where a prohi- [illegible] Will 1923 Mad 84=(1923) M W N 14, see also 23 C 908, 3 C W N 483, 8 C W N 362 Under this section an executor has merely the ordinary powers of sale that an owner would have in so far as they are not limited by the Will and such powers are therefore subject to the usual rules of equity 23 B 342=23 C 580 Where restriction imposed on an executor's power is invalid this power is unrestricted 23 C 44 Any restriction imposed on an executor's power may be removed by Court The Court generally removes the restrictions where it is satisfied that such removal is necessary 3 C L J 260, 23 C 580 As regards what may be considered as restrictions *vide*, 8 C W N 362, 23 C 908 When there is no restriction the executor can dispose of the property even without a grant 47 B 231=24 Bom L R 753=1922 B 392 An alienation by an executor without leave of the Court, when there is restriction in the Will is not void but merely voidable 8 C W N 54, 3 C L J 260

The power of an administrator of a deceased Hindu, Mahomedan, Sikh, or Jaina or an exempted person is limited 3 C W N 653, 26 C 607, 23 Bom L R 858 Permission to sell immovable property ought not to be granted to an administrator without the fullest enquiry and only when debts or other charges on the estate cannot be paid without selling the property 49 Ind Cas 302 Permission should not be granted unless the Court is satisfied the sale is necessary in the interest of the estate as a whole 80 Ind Cas 736=1924 Rang 237, 23 C. W

permission ... itor remains ... 35, 27 Ind

Cas 54=923 Rang 69

308 [Suc S 269 A & Pro S 90A] *General powers of administration* An executor or administrator may, in addition to, and not in derogation of, any other powers of expenditure lawfully exerciseable by him, incur expenditure—

(*a*) on such acts as may be necessary for the proper care or management of any property belonging to any estate administered by him, and

(*b*) with the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property

Notes—Even under the old law although a trustee is allowed nothing for his trouble he is allowed everything for his expenses out of pocket *How* v *Godfrey*, Finch 361, *Re Ormsby*, 1 B & B 190

309 [Suc S 269 B & Pro S 90B] *Commission or agency charges* An executor or administrator shall not be entitled to receive or retain any commission or agency charges at a higher rate than that for the time being fixed in respect of the Administrator General by or under the Administrator General's Act, 1913

Notes—It is the general principle that an executor or administrator shall have no allowance, at law or in equity, for personal trouble and loss of time in the execution of his duties *Williams on Executors*, 11th Ed p 1480

310. [Suc S 270 & Pro S 91] *Purchase by executor or administrator of deceased's property* If any executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

... cannot be allowed either immediately or ... *C. W*

311. [Suc. S 271 & Pr ... *Powers of several executors or administrators exercisable by one* ... executors or ... may, in the ... contrary, be exercised by any one of them who has proved the Will or taken out administration

Illustrations

(*i*) One of several executors has power to release a debt due to the deceased

(*ii*) One has power to surrender a lease

(*iii*) One has power to sell the property of the deceased whether movable or immovable

(*iv*) One has power to assent to a legacy

(*v*) One has power to endorse a promissory note payable to the deceased

(*vi*) The Will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum No act can be done by a single executor

Notes—The effect of this section so far as it relates to executors is this that where several executors obtain probate and the Will directs them all to act together,

none of them can act singly, but the section is not intended to disqualify by reason of any such direction in the Will, one of serveral executors who alone has obtained probate, the others having either renounced or refused or accept office 27 C 683; see also 34 C L J 457, 8 B 241 This section has no application, where a Will overrides it and provides that it is only the op nion of the majority of the executors appointed under it that should bind the estate 29 Ind Cas 505, 34 M 406=20 M L J 951 *Under this section one of several executors has the power to release a debt* 28 A 252, see also 29 Ind Cas 130, 54 Ind Cas 755, 30 B 173; 26 Ind Cas 369

Survival of powers on death of one of several executors or administrators

312. [Suc S 270 & Pro S 393] Upon the death of one or more of several executors or administrators, int he absence of any direction to the contrary in the Will or grant of letters of administration, all the powers of the office become vested in the survivors or survivor.

Notes—The power of two or more executors is not determined by the death of one for the whole survives to the others or other *Flanders* v *Clark*, 3 Atk 509 So also when administration is granted to two and one dies the administration like the office of executor, survives *Hudson* v *Hudson*, Cas Temph, Talb, 127 Where the power is given to the executors *qua* executors, it survives to the holders for the time being of the office of executors. The death of one of them before the power was exercised does not therefore render the power void 24 C 589

Powers of administrator of effects unadministered

313 [Suc S 273 & Pro S. 94] The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator

Notes—An administrator *de bonis non* is entitled to all the goods and personal estate, such as terms for years, household goods etc, which remain in specie, and were not first administered by the first executor or administrator *Wankford* v *Wankford*, 1 Salk, 306 An administrator *de bonis non* can recover money from the hands of a third person *Longford* v *Mahony*, 4 Dr & War 81

Powers of administrator during minority

314 [Suc S. 274 & Pro S 95] An Administrator during minority has all the powers of an ordinary administrator

Notes—The limits to his administration is no doubt the minority of the person, but there is no other limit He is an ordinary administrator, he is appointed for the purpose of getting in the estate, paying the debts and selling the estate in the usual way, and the property vests in him *In re Cope*, 16 Ch D 49

Powers of married executrix or administratrix

315 [Suc S 275 & Pro S 96] When a grant of probate or letters of administration has been made to a married woman, she has all the powers of an ordinary executor or administrator

Notes—In England a married woman executrix or administratrix cannot dispose of real estate, mortgage debts or chattels real, vested in her in that capacity without her husband's concurrence (1896) 2 Ch 358

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR

As to deceased's funeral

316 [Suc S 276 & Pro. S 97] It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose

Notes—*The wording of section 97 of the Act of 1881 has been followed as it is more suitable to the wider scope of the consolidated Bill and involves no change in substance*—*Notes on Clauses*

317 [Suc. S 277 & Pro S 98] (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may appoint exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall, in like manner, within one year from the grant or within such further time as the said Court may appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of

Inventory and account

(2) The High Court may prescribe the form in which an inventory or account under this section is to be exhibited

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an office under section 176 of the Indian Penal Code

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code

Sub section (1)—This section does not warrant an order requiring a series of yearly accounts It contemplates only one initial inventory and one final account after the completion of the administration 32 Ind Cas 554=9 S L R 134, 25 C 250=1 C W N 646, 25 C W N 977=48 C 1051=33 C L J 451, 31 C 628=8 C W N 578 The account of the estate which is required to be exhibited whether it is exhibited within one year or thereafter, is account contemplated by the second paragraph of the sub section (1) of this section 25 C W N 977 This section contemplates orders, merely directing the exhibiting of accounts in Courts 47 Ind Cas 750=12 S L R 27 The words in the latter part of the section 'from time to time appoint relate to an extension of time for putting in the account and does not authorize the Court to go on calling upon the executors to exhibit accounts from time to time as often as the Court thinks fit 25 C 250, 44 Ind Cas 58 No inventory satisfies the statutory requirements which does not contain a 'full and true statement of all the property in possession' 18 C W N 153=41 I A 236=41 C 556 The accounts submitted by an executor to a Probate Court does not exonerate his heir from his liability to render accounts showing how he has dealt with the property of co sharers of which he is in possession as trustee 23 C W N 658, see also 33 C L J 252=60 Ind Cas 79, 39 C 587, 15 C W N 882

Assets—The term 'assets means and includes property of a deceased person chargeable with and applicable to the payments of debts and legacies It includes immovable property. 21 C 65, 25 C 54, 31 C 572 Money converted by the executor for his own use is also assets of the testator 7 M L J 123; see also 78 Ind. Cas 320

318 [Suc S 277 A & Pro. S 199] In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor or administrator shall include in the inventory of the effects of the deceased all his movable and immovable property situate in British India, and the value of such property situate in each province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India

Inventory to include property in any part of British India in certain cases

319 [Suc S 278 & Pr[illegible] [illegible] shall [illegible] him at the time of his death

As to property of, and debts owing to, deceased

320 [Suc S 279 & Pro S 101.] Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death bed charges including fees for medical attendance and board and lodging for one month previous to his death, shall be paid before all debts

Expenses to be paid before all debts

321 [Suc S 280 & Pro S 102] The expenses of obtaining probate or letters of administration including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, shall be paid next after the funeral expenses and death bed charges

Expenses to be paid next after such expenses

Notes—All the expenses incurred for taking out probate or letters of administration, *i, e*, probate duties, stamp for petition of probate or letters of administration, process fees, cost of stamps for security bond pleader's fees and other legitimate expenses for obtaining probate or letters of administration come within the term "the expenses of obtaining letters of administration, etc" 31 P R 1906=133 P L R 1906, see also 13 C W N 557=9 C L J 382 Where a party is led into the contest by the estate in which the deceased left hispapers, his cost is paid out of the estate 11 C L J 461 But when the construction of the Will is not difficult the estate will not bear the cost 21 C 683, 15 C 725, 3 C L J 224 Where the executors of two inconsistent Wills acted properly in taking out probates, they were allowed costs out of the estate 25 C 553, 17 B 637 Costs incurred by a grantee in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral and death bed charges 17 B 637

322 [Suc S 280 & Pro S 103] Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant shall next be paid, and then the other debts of the deceased according to their respective priorities (if any)

Wages for certain services to be next paid and then other debts

Notes—*Vide* 17 W R 513=12 B L R 287

323 [Suc S 282 & Pro S 104] Save as aforesaid, no creditor shall have a right of priority over another, but the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably as far as the assets of the deceased will extend

Save as aforesaid, all debts to be paid equally and rateably

Notes—Section 35 of the Administrator General's Act (II of 1874) and this section deal with the creditor's rights as regards the general assets of their deceased [illegible]

[illegible] of the other creditors of the deceased before he had actually made the payments 11 P R 1878 This section merely lays down the procedure that must be followed by an executor or administrator and is not applicable where a creditor, who has obtained a decree against the estate of the deceased person applies for the execution of such decree 6 L B R 158=18 Ind Cas 510 Where a person obtains a decree against an executor or administrator he is entitled to have his decree satisfied out of the assets of the deceased, and that the section does not interfere with that right 17 W R 513

Application of movable property to payment of debts where domicile not in British India

324. [Suc S 2] If the domicile of the deceased was not in British India, the application of his movable property to the payment of his debts is to be regulated by the law of British India

(2) [Suc S 284.] No creditor who has received payment of a part of his debt by virtue of sub-section (1) shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings su h payment into account for the benefit of the other creditors

(3) This section shall not apply where the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person

Illustration

A d es having his domicile in a country where instruments under seal have priority over instruments not under seal leaving movable property to the value of 5 000 rupees and immovable property to the value of 10 000 rupees debts on instruments under seal to the amount of 10 000 rupee and debts on instrument not under seal to the same amount The creditors holding instruments under seal receive half of their debts out of the proceeds of the movable estate The proceeds [illegible] on instruments This will leave creditors w thout em

325 [Suc S 285 & Pro S 105] Debts of every description must be paid before any legacy

Debts to be paid before legacies

Notes—This section merely provides that the debts must be paid before any legacy is paid It does not say that if the legacy is paid before the debts are paid and the legatee deals with the property by any of mortgage or otherwise that transaction must be taken to be invalid 2 C L J 138=10 C W. N 30

326 [Suc S 286 & Pro S 106] If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due

Executor or administrator not bound to pay legacies without indemnity

327 [Suc S 287 & Pro S 107] If the assets, after payment of debts necessary expenses and specific legacies are not sufficient to pay all the general legacies in full the latter shall abate or be diminished in equal proportions and in the absence of any direction to the contrary in the Will the executor has no right to pay one legatee in preference to another or to retain any money on account of a legacy to himself or to any person for whom he is a trustee

Abatement of general legacies

Notes—In case the assets be sufficient to answer the debts and spec fic legac es [illegible] ement [illegible] cu or [illegible] ns on [illegible]

328 [Suc S 288 & Pro S 108] Where there is a specific legacy and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement

Non abatement of specific legacy when assets sufficient to pay debts

Notes—While any assets not specifically bequeathed rema n such as are specifically bequeathed are not to be applied in payment of debts although to the complete disappo ntment of the general legacies I Rop 355

329 [Suc S 289 & Pro S 109] Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted

Right under demonstrative legacy when assets sufficient to pay debts and necessary expens s

and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder

Notes —Demonstrative legacies are not appl cable in the administration of assets in payment of debts until after general legacies have been exhausted *Robert* v *Pocock*, 4 Ves 150, *Lambert* v *Lambert*, 11 Ves 607 If the fund provided for the ... deficient they are nevertheless so ... they are given to call upon the ... ards the loss or deficiency 29 ... 11 155

330 [Suc S 290 & Pro S 110.] If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts

Rateable abatement of specific legacies

Illustrations

A has bequeathed to B a diamond ring valued at 500 rupees and to C a horse valued at 1 000 rupees It is found necessary to sell all the effects of the testator, and his assets after payment of debts are only 1 000 rupees Of this sum rupees 333 5 4 are to be paid to B and rupees 666 10 8 to C

Notes —When the assets, not specifically bequeathed, are insufficient to pay all the debts then the specific legatees must abate in proportion to the value of their individual legacies *Williams on Executors*, p 1099

331 [Suc S 291 & Pro S 111]—For the purpose of abatement a legacy for life, a sum appropriated by the Will to produce an annuity and the value of an annuity when no sum has been appropriated to produce it shall be treated as general legacies

Legacies treated as general for purpose of abatement

Notes —All simple gifts of annuities are held to be pecuniary legacies *Creed* v *Creed*, 11 Cl & F 422 Where assets are deficient an annuity should be valued and ... ant absolutely ... lar fund out of ... assets of the

CHAPTER VIII

Of Assent to a legacy by Executor or Administrator

332 [Suc S 242 & Pro S 112] The assent of the executor or administrator is necessary to complete a legatee s title to his legacy

Assent necessary to complete legatee s title

Illustrations

(i) A, by his Will bequeaths to B his Government paper which is in deposit with the Imperial Bank of India The Bank has no authority to deliver the securities nor B a right to take possession of them without the assent of the executor

(ii) A by his will, has bequeathed to C his house in Calcutta in the tenancy of B C is not entitled to receive the rents without the assent of the executor or administrator

Notes —The essence of the matter is that, as a protection to the executor, the law ordains that every legatee whether general or specific and whether of chattels real or personal, must obtain the executor's assent to the legacy before his title as legatee can be complete and perfect, before such assent however, the legatee ... to his own personal repre- ... and in case of the out ... But this section is unfor- ... 78 Interest taken by the ... be mortgaged before the

assent of the executor is given to complete the title of the legatee 50 C 171, 42 M L J 567 A legatee cannot sue an executor for his legacy without his assent 37 Bom 567=14 Bom L R 782, 17 C 587 But the Madras High Court is of opinion that such a suit lies even without assent 46 M 190=43 M L J 486 The right to property left by Will falls into possession by Hindu law upon the death of the testator 14 C 801=14 I A 168

333 [Suc S 293 & Pro S 113] (1) The assent of the executor or administrator to a specific bequest shall be sufficient to divest his interest as executor or administrator therein and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way

Effect of executors assent to specific legacy

(2) [Pro S 148] This assent may be verbal, and it may be either express or implied from the conduct of the executor or administrator

Illustrations

(i) A horse is bequeathed The executor requests the legatee to dispose of it ... executor, and he directs him

... o be applied for the mainten ... commences so to apply it

(iii) A bequest is made of a fund to A and after him to B The executor pays ... satisfaction ... possession ... ssent may be presumed

Notes—After the executor has given his assent to the legacy he is not competent under this section to deal further with the property 28 C L J 141

334 [Suc S 294 & Pro Ss 114, 148] The assent of an executor or administrator to a legacy may be conditional and if the condition is one which he has a right to enforce, and it is not performed, there is no assent

Conditional assent

Illustrations

(i) A bequeaths to B his lands of Sultanpur, which at the date of the Will and at the death of B, were subject to a mortgage for 10 000 rupees The executor assents to the bequest on condition that B shall within a limited time, pay the amount due on the mortgage at the testator's death The amount is not paid There is no assent

(ii) The executor assents to a bequest on condition that the legatee shall pay him a sum of money The payment is not made The assent is nevertheless valid

Notes—These assents, like those to marriages of legatees may, as would seem be made dependent upon a precedent conditional, event connected with the administration of the assets 1 Rop Leg 743

335. [Suc S 295 & Pro Ss 115, 148] (1) When the executor or administrator is a legatee his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner, be expressed or implied.

Assent of executor to his own legacy

(2) Assent shall be implied if in his manner of administering the property, he does any act which is referable to his character of legatee and is not referable to his character of executor or administrator

Illustration

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use This is assent

[illegible]

who is appointed executor if the [illegible]rove the Will in order to entitle [illegible] Ves 417, *Dix* v *Reed*, 1 S & S [illegible] to his own legacy either express or implied he keeps it as an executor even when the debts, etc, have been paid *Re Vetes* (1894) 2 Ch. 100, but see (1903) 1 Ch 65, (1913) A C 76

336 [Suc. S 296 & Pro. S 116] The assent of the executor or administrator to a legacy gives effect to it from the death of the testator.

Effect of executor's assent

Illustrations

(*i*) A legatee sells his legacy before it is assented to by the executor The executor's subsequent assent operates for the benefit of the purchaser and completes his title to the legacy

(*ii*) A bequeaths 1,000 rupees to B with interest from his death The executor does not assent to his legacy until the expiration of a year from A's death B is entitled to interest from the death of A

Notes—This section lays down that the assent of the executor to a legacy gives effect to it from the death of the testator 50 C 171=36 C L J 21=A I R (1923) Cal 21

337. [Suc. S. 297 & Pro Ss 117 & 148] An executor or administrator is not bound to pay or deliver any legacy until the expiration of one year from the testator's death

Executor when to deliver legacies

Illustration

A by his Will directs his legacies to be paid within six months after his death The executor is not bound to pay them before the expiration of a year

Notes—A residuary legatee cannot compel the payment of the residue within the year even when debt and legacies are paid 7 Bom L R 755 The testator at his option may extend one year to two years 40 C 192

CHAPTER IX

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES

338 [Suc S 298 & Pro S 118] Where an annuity is given by a Will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event

Commencement of annuity when no time fixed by Will

Notes—With respect to the period, when the first payment of an annuity is to [illegible]

339 [Suc S 299 & Pro S 119] Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor or administrator thinks fit, be paid when due, but the executor or administrator shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due

Notes—Where a testator directs payment of an annuity (however given) to be made at the expiration of the first quarter, or half year, after his death, it will be due at that time although not in fact payable by the executor until the end of the year *Storer* v *Prestage*, 3 Mad 167, *Houghton* v *Franklin*, 1 Sim & Stu 390

340 [Sus S 300 & Pro S 120] (1) Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the Will authorizes the first payment to be made

Dates of successive payments when first payment directed to be made within a given time or on day certain: death of annuitant before date of payment

(2) If annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative

Notes—This section lays down that if an annuity is directed to be paid within one month from the testator's death, the successive payments are to be made on the anniversary of the day But according to English Law, where a testator gives an annuity to A for life, and directs the first payment to be made within one month from the death of the testator, and though the first year's payment is due at the appointed time the payment for the second year does not become due till the end of the year *Williams on Executors*, p 1116

CHAPTER X.

On the Investment of Funds to Provide for Legacies

341 [Suc S 301 & Pro S 121] Where a legacy, not being a specific legacy is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due

Investment of sum bequeathed where legacy, not specific, given for life

Notes—This section contemplates legacy other than specific legacy From the word "sum" used in this section it is clear that the legacy is a pecuniary legacy This section following the rule laid down in *Howe* v *Lord Dartmouth*, 7 Ves 137 laid down that the sum bequeathed should be invested in such securities as the High Court may by any general rule to be made from time to time authorize and direct The legatee shall be paid the proceeds thereof

342 [Suc S 302 & Pro S 122.] (*1*) Where a general legacy is given to be paid at a future time, the executor or administrator shall invest a sum sufficient to meet it in securities of the kind mentioned in section 341

Investment of general legacy to be paid at future time

(2) The intermediate interest shall form part of the residue of the testator's estate

Disposal of intermediate interest

Notes—Although the legatees are not entitled to receive the principal of their legacies before the time of payment arrives yet where the legacies are not charged under real estate they are entitled to have them either appropriated or secured, according to circumstances (Rop 793)

343 [Suc S 303 & Pro S 123] Where an annuity is given and no fund is charged with its payment or appropriated by the Will to answer it, a government annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in securities of the kind mentioned in section 341.

Procedure when no fund charged with, or appropriated to annuity

Notes—This section gives direction to the executors what they are to do when an annuity is given by a Will and no fund is charged with payment or appropriated

by the Will to answer it In such a case it is the duty of the executor to purchase a Government annuity of the specific amount But where such annuity cannot be obtained he is at liberty to invest sufficient amount in such securities as the High Court may by general rule authorize or direct *Trafford* v *Boehm*, 3 Atk 444

344 [Suc S 304 & Pro Ss 124, 148] Where a bequest is contingent, the executor or administrator is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee, if any, on his giving sufficient security for the payment of the lagacy if it shall become due

Transfer to residuary legatee of contingent bequest

345 [Suc. S 305] (1) Where the testator has bequeathed the residue of the estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in securities of the kind mentioned in section 341 shall be converted into money and invested in such securities

Investment of residue bequeathed for life, without direction to invest in particular securities

(2) This section shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person

Notes—This section follows the rule laid down in *Howe* v *Earl of Dartmouth* 7 Ves 137, as to the conversion of perishable property given to person in succession and not specifically

346 [Suc S 306 & Pro S 125] Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities so much of the estate as is not at time of his death invested in securities of the specified kind shall be converted into money and invested in such securities

Investment of residue bequeathed for life, without direction to invest in specified securities

Notes—In section 345 the executor is authorized in the absence of any direction by the testator to invest the residue in any particular securities, to invest the same or so much of it as is not invested, in authorized Government securities This section lays down that where there is a direction by the testator that the residue should be invested in a stock or security that intention should be given effect to *Bate* v *Hooper*, 5 De G M & G 338 344

347 [Suc S 307 & Pro Ss 126, 148] Such conversion aud investment as are contemplated by sections 345 and 346 shall be made at such times and in such manner as the executor or administrator thinks fit and, until such conversion and investment are completed, the person who whold be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent per annum upon the market value (to be computed as at the date of the testator's death) of such part of the fund as has not been so invested •

Time and manner of conversion and investment

Provided that the rate of interest prior to completion of investment shall be six per cent per annum when the testator was a Hindu Muhammadan, Buddhist, Sikh or Jaina or an exempted person

Notes—Express trust for conversion must be strictly pursued according to directions *Craven* v *Cradlock*, 20 L T N S 638 But where trustees have a discretionary power to convert or not or at such time as they think fit the Court cannot interfere with the exercise of that power *In re Sewell's Trust*, 11 L R. Eq 80

348. [Suc. S 308 & Pro S 127] (1) Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the Will to pay it to any person on his behalf the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom or by whose District Delegate the probate was, or letters of administration with the Will annexed were granted to the account of the legatee, unless the legatee is a ward of the Court of Wards

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf

(2) If the legatee is a ward of the Court of Wards, the legacy shall be paid to the Court of Wards to his account

(3) Such payment into the Court of the District Judge, or to the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid.

(4) Money when paid in under this section shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct

Notes.—*Vide* s 12 of the Official Trustees Act (II of 1913)

CHAPTER XI

Of the Produce and Interest of Legacies

349 [Suc S 309 & Pro S 128] The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death

Legatee's title to produce of specific legacy

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy The clear produce of it forms part of the residue of the testator's estate

Illustrations

(*i*) A bequeaths his flock of sheep to B Between the death of A and delivery by his executor the sheep are shorn or some of the ewes produce lambs The wool and lambs are the property of B

(*ii*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C The interest which falls due between the death of A and the death of C belongs to B, and, must unless he is a minor, be paid to him as it is received

(*iii*) The testator bequeaths all his four per cent Government promissory notes to A when he shall complete the age of 18 A, if he completes that age, is entitled to receive the notes, but the interest which accrues in respect of them between the testator's death and A's completing 18, forms part of the residue

Note.—[illegible] from the testator's death to [illegible] es the [illegible] until [illegible] esting of the legacy, the interest or produce forms parts of the residue of the testator's estate *Hind T L L* 387

350 [Suc S 310 & Pro S 129] The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy Such income goes as undisposed of

Illustrations

(*i*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18 The income from the testator's death belongs to A

(*ii*) The testator bequeaths the residue of his property to A, when he shall complete the age of 18 A, if he completes that age is entitled to receive the residue The income which has accrued in respect of it since the testator's death goes as undisposed of

Scope—In case of a general residuary bequest which is vested the legatee is entitled to the interest or produce of the residuary fund from the death of the testator, but if such a bequest is contingent the interest or produce goes as undisposed of *Hend T L L* 387

351 [Suc S 311 & Pro S 130] Where no time has been fixed for the payment of a general legacy, interest begins to run from expiration of one year from the testator's death

Interest when no time fixed for payment of general legacy

Exception—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator

Notes—The testator may pay the legacy within twelve months, but he is not compelled to do so, he is not to pay interest for any time within twelve months, although during the time he may have received interest but if he have assets he is to pay interest from the end of twelve months whether the assets are productive or not *Pearton* v *Pearson*, 1 Sch & Lef 10, see also 41 M L J 486, 43 C 201, 29 M 115

352 [Suc S 312 & Pro S 131] Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed The interest up to such time forms part of the residue of the testator's estate

Interest when time fixed

Exception—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the Will for maintenance, or unless the Will contains a direction to the contrary

Notes—Where a time of payment is named by the testator, the general rule is that legacies will not carry interest before the arrival of the appointed period of payment *Heath* v *Perry*, 3 Atk 101, *Tyrrell* v *Tyrrell*, 4 Ves 1 The rule is the same even where the legacies are vested *Heath* v *Perry*, 3 Atk 102

353 [Suc S 313 & Pro S 132] The rate of interest shall be four per cent per annum in all cases except when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, in which case it shall be six per cent per annum

Rate of interest

Notes—In England 'the rule at present established is to allow four per cent whether the legacy be charged upon land, or payable out of the personal estate only unless the Will directs otherwise" *Williams on Executors*, 11th Ed 1164, *Incledon* v *Northcote*, 3 Atk 432, *Re Campbell*, (1893) 3 Ch 472, *Re Davy*, (1908) 1 Ch 61

354 [Suc S 314 & Pro S 133] No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration, of that year may have been fixed by the Will for making the first payment of the annuity

No interest on arrears of annuity within first year after testator's death

Notes—Annuities, where no time of payment is mentioned by the testator, are considered as commencing from the death of the testator, and consequently the first payment will be due at the end of the year from that event, if therefore it be not made, the interest, in those cases where it is allowed at all, must be computed from that period 2 *Roper on Legacies* 3rd Ed p 308

355 [Suc S 315 & Pro S 134] *Interest on sum to be invested to produce annuity* Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator

Notes—Section 351 to 355 relate to interest on annuities or legacies payable by the executor 24 C W N 592=54 Ind Cas 104

CHAPTER XII

OF THE REFUNDINGS OF LEGACIES

356 [Suc S 316 & Pro Ss 135 148] *Refund of legacy paid under Court's orders* When an executor or administrator has paid a legacy under the order of a Court, he is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Notes—In *Newman* v *Barton* [illegible] had between the voluntary and compulsory paym [illegible] held that he could not oblige the lega [illegible] was entitled to do so in the second [illegible]

357 [Suc S 357 & Pro S 136] *No refund if paid voluntarily* When an executor or administrator has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies

Notes—Where the payment of the legacy by the executor or administrator is voluntary, he can not sue the legatee for a refund even when the assets prove insufficient to pay all the legacies *Coppin* v *Coppin* 2 P Will 292 (296)

358 [Suc S 318 & Pro S 137.] *Refund when legacy has become due on performance of condition within further time allowed under section 137* When the time prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed, and the executor or administrator has thereupon without fraud distributed the assets, in such case if further time has been allowed under section 137 for the performance of the condition and the condition has been performed accordingly, the legacy cannot be claimed from the executor or administrator, but those to whom he has paid it are liable to refund the amount

Notes—The principle upon which an executor is compellable to pay is thus stated by *Sir Strange M R* in *Orr* v *Kaines*, 2 Ves Sen 194 "The rule is that whenever an executor pays a legacy it is presumed he has sufficient to pay all legacies, and the Court will oblige him if solvent to pay the rest and not permit him to maintain a suit to compel the legatee whom he voluntarily paid to refund"

359 [Suc S 319 & Pro S 138] *When each legatee compellable to refund in proportion* When the executor or administrator has paid away the assets in legacies and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion

Notes—If executors pay away the assets in legacies and afterwards debts appear, and they be obliged to discharge them (of which debts they had no notice before the legacies were paid) the executors may by a suit compel the legatees to refund *Nelthrop* v *Biscoe* 1 Chan Ca 135, *Doe* v *Guy*, 3 East 120 123

360 [Suc S. 320 & Pro S 139] Where an executor or administrator has given such notices as the High Court may, by any general rule, prescribe or, if no such rule has been made, as the High Court would give in an administration suit, for credi

Distribution of assets

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to any person of whose claims he shall not have had notice at the time of such distribution

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively

Notes—This section is based on section 29 of Stat 22 & 23 Vict c 35 The cred tors and other beneficiaries claim, may at the expiration of the estate without being liable notice at the time of the distribution *Clegg* v *Rawland*, 3 L R Eq 368

361. [Suc S 321 & Pro Ss 140, 148] A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies and whether the payment of the legacy by the executor or administrator was voluntary or not.

Creditor may call upon legatee to refund

Notes—That a creditor has a right to call upon the legatees to refund is a proposition which can not be doubted The certainty that a creditor has such a privilege was declared by the Court of Chancery in *Noel* v *Robinson*, 1 Vern 94 and *Newman* v *Barton*, 2 Vern 205

362 [Suc S. 362 & Pro S 141] If the assets were sufficient to satisfy all the legacies at the time of the testator s death, a legatee who has not received payment of his legacy, or who has been compelled to refund under section 361, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor

When legatee not satisfied or compelled to refund under section 361 cannot oblige one paid in full to refund

satisfy all the legacies and one or without suit, payment of his render it deficient to discharge the satisfied legatee to refund, 2ndly because the legatee is *utibus juri subrentium* (the law over their rights) *Rop* 2nd Ed p 382

363 [Suc S 323 & Pro S 142] If the assets were not sufficient to satisfy all the legacies at the time of the testator's death a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund first proceed against the executor or administrator if he is solvent, but if the executor or administrator is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion

When unsatisfied legatee *must first proceed against* executor if solvent

... general rule that an unsatisfied legatee cannot ... who has been paid by the executor because the ... inst the executor (*Noel* v *Robinson* 1 Vern 90) ... is admitted assets for payment of all But an ... the executor is in insolvent circumstances for ... e no redress against him he would be without a ... upon the other legatees to refund *Orr* v *Kaines*

364 [Suc S 324 & Pro S 143] The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered

Limit to refunding of one legatee to another

Illustration

A has bequeathed 240 rupees to B 480 rupees to C, and 720 rupees to D The assets are only 1,200 rupees and, if properly administered, would give 200 rupees to B, 400 rupees to C and 600 rupees to D C and D have been paid their legacies in full, leaving nothing to B B can oblige C to refund 80 rupees, and D to refund 120 rupees

Notes—That as all the legatees are, upon a deficiency of assets to be paid in proportion, so if the executor paid one of them the rest should make him refund in proportion *Per Joseph Jekeyel* in *Anon* 1 P Will 405

365 [Suc S 325 & Pro S 144] The refunding shall in all cases be without interest

Refunding to be without interest

Notes—The rule underlying this section is thus stated by *Lord Eldon* in *Gillives* v *Steele* 1 Swanst 200 'If a legacy have been erroneously paid to a legatee who has no further property in the estate in recalling that payment, I apprehend that the rule of the Court is not to charge interest; but if the legatee is entitled to another fund making interest in hand of the Court justice must be done out of his share"

366 [Suc S 326 & Pro S. 145] The surplus or residue of the deceased s property, after payment of debts and legacies shall be paid to the residuary legatee when any has been appointed by the Will

Residue after usual payments to be paid to residuary legatee

Notes—A residuary legatee does not become the "proprietor" of the estate until the administration has been completed and the residue ascertained and made over by the executor 12 C W N 1065=36 C 28, 7 Bom L R 755

367 [Suc S 326A & Pro S 145A] Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death and there has been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country the executor or administrator, as the case may be in British India, after having given such notices as are mentioned in ... at the expiration of the time there... instead of himself distributing ...ty to persons residing out of ..., with the consent of the executor or administrator, as the case may be, ... country of domicile, the surplus or residue to him for distribution to those persons

Transfer of assets from British India to executor or administrator in country of domicile for distribution

Notes—It is the duty of local or limited administrators to remit or pay over to the administrator in the *forum* of the domicile any surplus or balance in their hands of the personal estate got in by them *Eames* v *Hacon*, 16 Ch D 407 S C 18 Ch D 347, *Enohin* v *Wylie* 10 H L C 1

CHAPTER XIII

Of the Liability of an Executor or Administrator for Devastation

368 [Suc S 327 & Pro S 146] When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned

Liability of executor or administrator for devastation

Illustrations

(i) The executor pays out of the estate an unfounded claim He is liable to make good the loss

(ii) The deceased had a valuable lease renewable by notice which the executor neglects to give at the proper time The executor is liable to make good the loss.

(iii) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time The executor neglects to give the notice He is liable to make good the loss

Notes —"The general rule adopted, with respect to the liability of executors two principles, 1st that in order the Court is extremely liberal ons not to hold executors and

against an abuse of their
13 Ves 410, *Tebels* v *C*
Ed 1417 It is the duty
the conduct of each other, and an executor who stands by and sees a breach of trust committed by his co executor, becomes responsible for that breach of trust To
C L J 503 It is a
them from the trust
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trustees in some circu
criminal as well as civil 6 C 70

369 [Suc S 328 & Pro S 147] When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount

Liability of executor or administrator for neglect to get in any part of property

Illustrations

(i) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full The executor is liable to make good the amount

(ii) The executor neglects to sue for a debt till the debtor is able to plead that the claim is barred by limitation and the debt is thereby lost to the estate The *executor is liable to make good the amount*

Notes —An executor or administrator is liable at law as far as *devastavit*, for assets wasted by his negligence *Seamen* v *Dee* 1 Vent 198 An executor who permits an interest bearing debt of his testator to remain unpaid while possessed of assets sufficient to satisfy the principal cannot set up the payment of interest accrued since the death of the testator against the claim of a creditor *Ibid.* Acts of negligence or careless administration as defeat the rights of creditors or legatees, or parties entitled in distribution amounts to a *devastavit* For if a person accept the trust of an executor he must perform it he must use due diligence, and not suffer the estate to be injured by his neglect. *Williams on Executors*, 11th Ed p 1424

PART X

Succession Certificates

370 [Suc. Cer S 1 (4)] (1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by

Restriction on grant of certificates under this Part.

section 212 or section 213 to be established by letters of administration or probate

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act

(2) [Suc Cer S 3 (2)] For the purposes of this Part, "security" means—

(a) any promissory note, debenture, stock or other security of the Government of India or of a Local Government,

(b) any bond, debenture or annuity charged by Act of Parliament on the revenues of India,

(c) any stock or debenture of, or share in, a company or other incorporated institution,

(d) any debenture or other security for money issued by, or on behalf of, a local authority,

(e) any other security which the Governor General in Council may, by notification in the *Gazette of India*, declare to be a security for the purposes of this Part

Notes —The Indian Succession Act of 1865 was not only made applicable to persons of European descent, or those to whom the system derived from the Ecclesiastical Courts might naturally be applied but was made the law of all persons in British India other than the Hindus, Mahomedans and Buddhists including, for instance, the Parsis who form so important a part of the community in some districts of India 9 C W N 938=33 C 116 (P C) The word 'Hindu includes a Sikh and a Jaina 7 C W N 895, 3 A 55 A Hindu heir is not obliged to take out letters of administration 13 C W N 1190 Fixed deposit in a bank is a security 28 A 477 Insurance policy is not contemplated under this section 33 Ind Cas 157

371 [Suc Cer S 5] **Court having jurisdiction to grant certificate** The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part

Notes —A certificate may be granted by the District Judge within whose jurisdiction the deceased ordinarily resided, or, if at the time of his death he had no fixed place of residence, then by the District Judge within whose jurisdiction any part of the property of the deceased may be found 1885 A W N 39, 20 W R 285; 7, Ind Cas 295 The Act does not make provision for administration of the effects of a foreigner domiciled abroad 12 B 150 The agent of the Governor at Vizagapatam is a District Court 31 M 362=18 M L J 252 The term 'residence denotes the place where an individual eats, drinks and sleeps, or where his family or servants eat, drink and sleep It is not identical with ownership. 13 C L J 221 So where the deceased at the time of his death had his ordinary place of residence within the jurisdiction of the trial Court and did his business there the Court had sufficient authority under this section to dispose of the proceedings 71 P W. R 1916=33 Ind Cas 603 The term 'property' includes debts for which certificate is taken 20 W R 286 Where a competent Court grants a certificate of succession to a certain person under this Act it is not open to a Court before which such succession certificate is produced as authority to collect the debts entered therein to question the right of the Court which granted the certificate to hold otherwise would be to open the door to confusion and give opportunity to fraud 27 A 87=A W N 1904, 172

372 [Suc Cer. S 6] **Application for certificate** (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1903, for the signing

and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars namely —

(a) the time of the death of the deceased ,

(b) the ordinary residence of the deceased at the time of his death and *if such residence was not within the local limits of the jurisdiction of the Judge* to whom the application is made, then the property of the deceased within those limits ,

(c) the family or other near relatives of the deceased and their respective residences ,

(d) the right in which the petitioner claims ,

(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted , and

(f) the debts and securities in respect of which the certificate is applied for

(2) If the petition contains any averment which the person veryfying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code *

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof †

Notes —*A certificate can be granted to the mother of a minor with the consent* of the father if the mother be competent and willing 12 W R 119 A certificate of succession can be granted to a minor through his next friend 20 A 352 , 5 C L R 517 , 15 Ind Cas 408 16 Ind Cas 797 , but see 4 S L R 266=10 Ind Cas 981 , 25 B 523 A certificate under this Act can be issued to the guardian of a minor appointed under the Guardians and Wards Act 28 B 344=6 Bom L R 281 There is nothing in the law to prevent the Court from entertaining an application and granting a certificate in respect of some only of the several debts due to a deceased person 18 A 45 An assignee of debts from the heirs of a deceased person can apply for a certificate 42 A 549 40 Ind Cas 96=2 P L J 350 , 62 Ind Cas 944=44 M 499 (F B) The petition must set forth the claim of the petitioner 15 C 574 A person who is not an heir of the deceased cannot apply 35 C 631 A petition for a certificate must specify each debt and security in respect of which a certificate is asked for 8 Ind Cas 996 , but see 5 M L J 36

373 [Suc Cer S 7] (1) If the District Judge is satisfied that there is ground for entertaining the application he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

Procedure on application

(a) to be served on any person to whom, in the opinion of the Judge, [illegible]

[illegible] ourt house and pub [illegible] t to any rules made

[illegible] be practicable, shall proceed to decide in a summary manner the right to the certificate

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him

(3) If the [illegible] certificate without determining questions [illegible] be too intricate and difficult for determina[illegible] he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the

* Act XLV of 1860

† Added by Act XIV of 19?5

Effect of certificate

381 [Suc. Cer S 16] Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive a ... hts or liable on such securities, and shall ... of section 370, or other defect, afford ... as regards all payments ... h debts or securities to

... s to facilitate the collection ... ying debts to representatives of deceased persons 57 Ind Cas 641 Before certificate is obtained the prescribed duty must be paid 57 Ind Cas 55=42 A 549, 33 A 327, 15 B 105, 35 A 74 A succession certificate facilitates the collection of debts 38 A 477 Such a certificate does not give any general power of administration of the estate of the deceased, 33 Ind Cas 157, see also 1 Ind Cas 205 The grant of a certificate under this Act gives the grantee a title to recover a debt due to the deceased and payment to the grantee is a good discharge of the debt; 43 Ind Cas 972 see also 28 B 119, 71 P W R 1916=33 Ind Cas 603; 2 C 51, 20 Ind Cas 263, 9 A L J 766, 26 M 224, 99 P R 1890, 4 A 355, 28 C L J 299 A grant of certificate does not constitute the proof of debt nor does it determine the form of a suit in which a claim has to be enforced 15 C L J 348 The grant of a certificate does not decide right to the land 11 W R Cr. 23; see also 8 W R 1, 18 W R C R 35 An assignee of a deceased creditor acquires a conclusive right against the heirs of a deceased debtor where he takes out a certificate under this Act 9 A L J 766=16 Ind Cas 108, 26 M 224; 99 P R 1899, 29 P R 1899, 49 Ind Cas 958 A succession certificate is conclusive as against debtor under this section and can be revoked by the District Judge only under s 18 12 A L J 524=36 A 423=25 Ind Cas 320, 28 C L J 299 The only effect of this section is that if the debt remained unpaid up to the grant of the certificate, the certificate is conclusive and compell the debtor to pay it to the certificate holder 93 Ind Cas 360=A I R 1926 Mad 407 A decision under this Part as regards the validity of a Will, will not debar a subsequent proceeding 11 W R 127, 12 W R 451, 16 W R 214, 18 W R 254, 24 W R 173 Finding as regards adoption in a succession certificate case is not conclusive A W N (1902) 62. The holder of a certificate who has to collect debts due to the estate of a minor cannot be compared to a certified guardian 80 Ind Cas 422=1924 A I R (Bom) 394

Effect of certificate granted or extended by British representative in foreign State

382 [Suc Cer S 17] Where a certificate in the form, as nearly as circumstances admit, of Schedule VIII has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court Fees Act, 1870,* with respect to certificates under this Part, have the same effect in British India as ... Part

... is representative right in the Court ... ply to the British representative for

... granted under this Part may be

Revocation of certificate

revoked for any of the following causes, namely :—

(a) that the proceedings to obtain the certificate were defective in substance,

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case,

(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

* VII of 1870

(*d*) that the certificate has become useless and inoperative through circumstances,

(*e*) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked

Notes—The revocation must be made by the Court which granted the certificate 21 C L J 154=19 C W N 551=27 Ind Cas 821 A Court has no power to cancel a certificate granted to collect debts of a deceased person 7 M 558 *This section provides for the revocation of certificate granted under the Act for certain causes* 21 C L J 154=19 C W N 551

Clause (a)—*Vide* 12 C W N 6, 2 C W N 607, 19 W R 252, 37 C 387, 24 C W N 541, 24 C W N 538, 19 C W N 882, 19 C W N 1108

Clause (b)—79 Ind Cas 639

Clause (c)—11 Ind Cas 701

Clause (d)—26 B 792, 16 C W N 880, 42 A 347

Clause (e)—15 M L J 399

384 [Suc Cer S. 19] (1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit [illegible] person to whom the certificate should be [illegible], on application being made therefor, to [illegible] granted [illegible] the time [illegible] ions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908,* as applied by section 141 of that Code, an order of a District Judge under this Part shall be final

Appeal

Notes—An appeal lies from the result of an enquiry or from omission to make an inquiry 20 W R 312, 42 A 512=8 A L J 609=56 Ind Cas 18 An appeal, from an inferior Court empowered under s 26 lies to the District Court 16 O C 197, 17 M 167=4 M L J 72, 8 A L J 1300, 121 P W R 1917 There is no provision in the Act for a second appeal 2 Lah L J 312 An application for review lies 1 C 101, 5 M H C [illegible] an application for review of an [illegible] that security be furnished 40 I[illegible] the Governor of *Vizagapatam* 3 [illegible] an *exparte* order granting a certificate under this section and it is not absolutely incumbent upon the [illegible] the certificate 56 In[illegible] 1881, 162 An order [illegible] a certificate and as su[illegible] [illegible] 214, 19 B 790, [illegible] 231, but see 25 C 310, 20 M 442, 5 M L J 28, 139 P R, 1909, 36 B 277

Scope—Under Act VII of 1889 a separate certificate cannot be applied for and granted to each and every heir to a fractional share in the estate of a deceased person so as to qualify him to separately recover his share from the creditor or creditors A W N 1890 91

* V of 1908

Effect on certificate of previous certificate, probate or letters or administration

385. [Suc Cer S 20] Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force

Validation of certain payments made in good faith to holder of invalid certificate

386 [Suc Cer S 22] Where a certificate under this Part has been superseded or is invalid by reason of the certificate having been revoked under section 383 or by reason of the grant of a certificate to a person named in an appellate order under section 384 or by reason of a certificate having been previously granted or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate

Effect of decisions under this Act and liability of holder of certificate thereunder

387 [Suc Cer S 25] No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto

Notes — No decision under this Part bars in any way the right of the parties or establishes the right of the party to the debt to collect which the certificate is granted 5 C W N 594, 60 Ind Cas 774 = 19 A L J 268, 33 Ind Cas 603, 68 Ind Cas 392, 93 Ind Cas 360

Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act

388 [Suc Cer S 26] (1) The Local Government may, by notification in the Local official Gazette, invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge

Provided that an appeal from any such order of an inferior Court as is mentioned in sub section (1) of section 384 shall lie to the District Judge, and not to the High Court and that the District Judge may, if he thinks fit, by his order on the appeal make any such declaration and direction as that sub section authorises the High Court to make by its order on an appeal from an order of a District Judge

(3) An order of a District Judge on an appeal from an order of an inferior Court under [illegible] subject to the provisions as to reference to [illegible] and as to review of judgment of the Code [illegible] section 141 of that Code, be final

(4) The District Judge may withdraw any proceedings under this Part from an Inferior Court and may either himself dispose of them or transfer

* V of 1908

them to another such Court established within the local limits of the jurisdiction *of the District Judge and having authority to dispose of the proceedings*

(5) A notification under sub section (1) may specify any inferior Court specially or any class of such Courts in any local area

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall for the purposes of this section, be deemed to be a Court inferior in grade to a District Judge

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389 [Suc Cer S 27] (1) When a certificate under this Part has superseded or is invalid from any of the causes mentioned in section 386 the holder thereof shall on the requisition of the Court which granted it, deliver it up to that Court

Surrender of superseded and invalid certificates

(2) If he wilfully and without reasonable cause omits so to deliver it up, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both

390 [Suc Cer S 28] Notwithstanding anything in Bombay Regulation No *VIII* of 1827, the provisions of section 370, sub section (2), section 372, sub section (1), clause (f) and sections 374, 375, 376, 377, 379, 381, 383 384, 387, 388 and 389 with respect to certificates under this Part and applications therefor, and of ... with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as ... made applicable ... to certificates granted under ... cates thereunder, after the 1s ... *tories and accounts by the ho*

Provisions with respect to certificates under Bomby Regulation VII of 1827

PART XI

Miscellaneous

391. [Suc S 149] Nothing in ... VIII, Part IX or Part X shall—

Saving

(i) validate any testamentary disposition which would ... been invalid,

(ii) invalidate any such disposition which would otherwise ... valid,

(iii) deprive any person of any right of maintenance to ... otherwise have been entitled, or

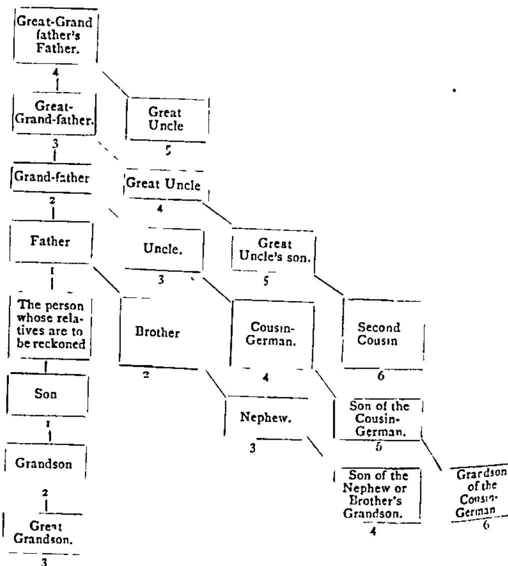
(iv) affect the Administrator General's Act 1913

392. *Repealed by XII of 1927*

SCHEDULE I.

(*See section 28*).

TABLE OF CONSANGUINITY.



SCHEDULE II.

PART I.

(See section 55)

(1) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate

(2) Grandfather and grandmother

(3) Grandfather's sons and daughters and the lineal descendants of such of them as have predeceased the intestate

(4) Great grandfather and great grandmother

(5) Great grandfather's sons and daughters, and the lineal descendants of such of them as have predeceased the intestate

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PART II.

(See section 56)

(1) Father and mother

(2) Brothers and sisters and the lineal descendants of such of them as have predeceased the Intestate

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lineal descendants of such of

lineal descendants of such of them as have predeceased the intestate

(7) Brothers and sisters by the mother's side and the lineal descendants of such of them as have predeceased the intestate

(8) Maternal grandfather and maternal grandmother

(9) Children of the maternal grandfather, and the lineal descendants of such of them as have predeceased the intestate

(10) Son's widow, if she has not re married at or before the death of the intestate

(11) Brother's widow, if she has not re married at or before the death of the intestate

(12) Paternal grandfather's son's widow, if she has not re married at or before

not re married at or before

if they have not re-married

and the lineal descendants of

(17) Paternal grandmother's father and mother

(18) Children of the paternal grandmother's father, and the lineal descendants of such of them as have predeceased the intestate

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SCHEDULE III

(See section 57)

PROVISIONS OF PART VI APPLICABLE TO CERTAIN WILLS AND CODICILS DESCRIBED IN SECTION 57

Sections 59, 61, 62, 63, 64, 68, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 95, 96, 98, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 113, 114, 115, 116, 117,* 119, 120, 121, 122, 123, 124, 125, 126 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158 159, 160, 161, 162 163, 164, 165, 166, 167, 168, 169 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182 183, 184, 185 186, 187, 188, 189 and 190

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* Inserted by Act 21 of 1929

Restrictions and modifications in application of foregoing sections

1 Nothing therein contained shall authorise a testator to bequeath property which he could not have alienated *inter vivos* or to deprive any persons of any right of maintenance of which, but for the application of these sections he could not deprive them by Will

2 Nothing therein contained shall authorise any Hindu Buddhist Sikh or Jaina, to create in property any interest which he could not have created before the first day of September 1870

3 Nothing therein contained shall affect any law of adoption or intestate succession

4 In applying section 70 the words "than by marriage or' shall be omitted

5 In applying any of the following sections, namely, sections seventy five seventy six, one hundred and five, one hundred and nine one hundred and eleven, [illegible] and thirteen, one hundred and fourteen one [illegible] and sixteen to such Wills and codicils the [illegible]ren' shall be deemed to include an adopted [illegible] shall be deemed to include the children [illegible]f a child whether adopted or natural born, [illegible] shall be deemed to include the wife of an adopted son

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SCHEDULE IV

[*See section 274 (2)*]

FORM OF CERTIFICATE

I A B Registrar (*or* as the case may be) of the High Court of Judicature at (*or* as the case may be) hereby certify that on the day of , the High Court of Judicature at (*or* as the case may be) granted probate of the Will (*or* letters of administration of the estate) of C D, late of , deceased, to E F of and G H of , and that such probate (*or* letters) has (*or* have) effect over all the property of the deceased throughout the whole of British India

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SCHEDULE V

[*See section 284 (4)*]

FORM OF CAVEAT

Let nothing be done in the matter of the estate of A B, late of deceased, who died on the day of at without notice to C. D, of

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SCHEDULE VI

(*See section 289*)

FORM OF PROBATE

I, Judge of the District of [or Delegate appointed for granting probate or letters of administration in (*Here insert the limit of the Delegate's jurisdiction*)] hereby make known that on the day of in the year , the last Will of late of a copy whereof is hereunto annexed, was proved and registered before me and that administration of the property and credits of the said deceased, and in any way concerning his Will was granted to the executor in the said Will named he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may, from time to time, appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint

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SCHEDULE VII

(*See section 290*)

FORM OF LETTERS OF ADMINISTRATION

I,   Judge of the District of   [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*),] hereby make known that on the   day of   letters of administration (with or without the Will annexed, as the case may be), of the property and credits of   , late of   deceased were granted to   , the father (*or* as the case may be) of the deceased, he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may, from time to time, appoint, and also to render to this Court a true account of the said property and the credits within one year from the same date or within such further time as the Court may, from time to time, appoint

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SCHEDULE VIII

(*See section 377*)

FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE

In the Court of

To *A B*

Whereas you applied on the   day of   for a certificate under part X of the Indian Succession Act, 1925, in respect of the following debts and securities, namely —

Debts

Serial number	Name of debtor	Amount of debt, including interest on date of application for certificate	Description and date of instrument, if any, by which the debt is secured

Securities

Serial number	Description			Market value of security on date of application for certificate
	Distinguishing number or letter of security	Name, title or class of security	Amount or par value of security	

This certificate is accordingly granted to you and empowers you to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*],

Dated this day of

District Judge

In the Court of , I

On the application of *A B* made to me on the day of hereby extend this certificate to the following debts and securities, namely —

Debts

Serial number	Name of debtor	Amount of debt, including interest, on date of application for extension	Description and date of instrument, if any by which the debt is secured

Securities

Serial number	Description			Market value of security on date of application for extension
	Distinguishing number or letter of security	Name, title or class of security	Amount or par value of security	

This extension empowers *A B* to collect those debts [*and*] [*to receive*] [*interest*] [*dividends*] [*on*] [*to negotiate*] [*to transfer*] [*those securities*] .

Dated this day of .

District Judge

SCHEDULE IX

Repealed by XII of 1927

THE SUITS VALUATION ACT, 1887.

ACT NO VII OF 1887 *

RECEIVED THE G G S ASSENT ON THE 11TH FEBRUARY, 1887

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto, it is hereby enacted as follows —

Title 1 This Act may be called the Suits Valuation Act, 1887.

* For Statement of Objects and Reasons—*See the Gazette of India* 1886 Pt V p 791 for Report of the Select Committee—*See ibid* 1887 Pt IV p 18, and for Proceedings in Council *See ibid* 1886 Supplement pp 1131 and 1155, and *ibid* 1887, Pt VI pp 16 and 21

Act VII of 1877 has been declared to be in force in Upper Burma, (except the [illegible] Schedule [illegible] cheduled [illegible] luchistan [illegible] Laws Regulation (I of 1890)

PART I

Suits Relating to Land

Extent and commencement of Part I

2 This Part shall extend to such local areas, and come into force therein on such dates, as the Governor General in Council, by notification in the *Gazette of India* directs *

Power for Local Government to make rules for determining value of land for jurisdictional purposes

3 (1) The Local Government may, "subject to the control"† of the Governor General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court Fees Act, 1870, section 7, paragraphs v and vi and paragraph x, clause (*d*)

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area and may prescribe different values for different places within the same local area

Notes —Where the suit is for the acquisition of a contingent interest in land and not for possession or for a present interest, the rules of the Local Government framed under s 3 will not apply, and the value for purposes of jurisdiction will be that set forth in the plaint 18 P R 1897

Valuation of relief in certain suits relating to land not to exceed the value of the land

4 Where a suit mentioned in the Court Fees Act, 1870, section 7, paragraph iv, of Schedule II article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which, for purposes of jurisdiction, the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules

Notes —A suit which is one for declaration and relates to occupancy land or interest in occupancy land is clearly covered by s 4 of the Act, which must be read with the rules framed under the provisions of s 3 to determine the value for purposes of jurisdiction 54 P R 1914—238 P L R 1914=153 P W R 1914 The proper valuation for purposes of jurisdiction of a suit for declaration that certain property is the absolute property of the plaintiff and is not liable to partition is thirty times the *jama* 81 P R 1918=46 Ind Cas 490

Making an enforcement of rules

5 (1) The Local Government shall, before making rules under section 3, consult the High Court with respect thereto

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official Gazette

Repealed of section 14 of the Madras Civil Courts Act 1873

6 On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort St George in Council to which the Madras Civil Courts Act, 1873, extends section 14 of that Act shall be repealed as regards that part of those territories

PART II

Other Suits

Extent and commencement of Part II

7 This Part extends to the whole of British India and shall come into force on the first day of July, 1887

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* Part I of the Act has under s 2, been declared to extend to the Punjab and to come into force therein on the first day of March 1889—*See the Gazette of India* 1889 pt I p 107

† The words within quotations have been substituted by Act 38 of 1920.

8 Where in suits other than those referred to in the Court Fees Act 1870 section 7, paragraphs v, vi, and ix, and paragraph x, clause (d), Court fees are payable *ad valorem* under the Court Fees Act, 1870 the value as determinable for the computation of Court fees and the value for purposes of jurisdiction shall be the same

Court fee value and jurisdictional value to be the same in certain suits

Determinable—The word applies as much to the final and exact and judicial determination made under s 11 of the Court Fees Act as it does to the inexact and *exparte* valuation in the plaint 20 B 265

Notes—In a suit for accounts, the valuation entered in the plaint for the purpose of Court fees determines the jurisdiction, the value for both purposes being the same 18 B 40, 22 C 692, 34 C W N 1133, 19 B 198 The value of the subject matter of the suit in a redemption suit is not the market value of the property but the amount of the mortgage money 5 A L J 713=31 A 44=1 Ind Cas 703 The value for the purposes of jurisdiction of a suit for cancellation of an auction sale of a house sold in execution of a money decree is the value of the judgment debtor's interest in the house in suit assessed by the auction sale, and not the value the plaintiff chose to assess it at 42 P R 1901 Where the plaintiff prays that his *mukarari* and *maurashi* right in certain land be declared the suit should be valued at the yearly rental payable for it 17 C W N 160 In a suit for restitution of conjugal right the plaintiff is at liberty to value his own relief which determines the jurisdiction 3 A L J 266=A W N 1906, 99 (F B)=28 A 543, 34 C 352=5 C L J 400=11 C W N 458 see also 11 Bom L R 1352=4 Ind Cas 836 In the case of suits falling under s 7 of the Court Fees Act the valuation is the same for purposes of Court fees and jurisdiction There is nothing to indicate that s 8 of the Suits Valuation Act should be read subject to the provisions of s 14, Madras Civil Courts Act 25 M L J 573=24 Ind Cas 374 *Under this section in suits for the cancellation and return of a bond* the valuation as determinable for computation of the Court fee and that for the purposes of jurisdiction should be the same (1914) M W N 767=16 M L T 516 [illegible] of the subject matter [illegible] the two heads of relief [illegible] lue of suit for the declar[illegible] suit were one of possession of the property regarding which the plaintiff seeks to have his title declared 1921 Pat 105 Under this section the valuation for the purposes of Court fees determines the valuation for the purposes of jurisdiction also 19 [illegible] Lah 236=66 Ind Cas 34 The [illegible] should be based on the annuity claimed [illegible] Act and it is the same for the pur[illegible] L R 247=87 Ind Cas 801 In [illegible] the plaintiff is allowed to value his claim tentatively for the purpose of Co[illegible] the Court on looking into the accounts is competent to pass a decree in excess of *its pecuniary jurisdiction 89 Ind Cas 353=A I R 1925 Sind 324*

Partition.—According to the Bombay High Court the value of plaintiff's share in the joint property determines the jurisdiction of a Court, in a partition suit 22 B 315 see also 33 B 658=11 Bom L R 1074 6 Bom L R 403 The Allahabad High Court also took the same view 24 A 381 When a suit for partition relates to a coparcenary property, unless it is one for general partition among all the share holders, the specific and definite share claimed must be held to be the subject matter of the suit as stated in the Suits Valuation Act and the Civil Courts Act 19 M 56, 21 M 234 This section applies to suits for partition which are not also suits for possession In such a case the plaintiff is entitled to *value the relief* according to his own discretion 13 Ind Cas 903=M W N 1913 199=11 M L T 155 11 M L J 21=8 Ind Cas 51, 43 M 396, 38 M L J 9, 1910 M W N 124 According to Patna High Court the plaintiff's share determines the jurisdiction of Court where he is not in possession 1 Pat L T 595=58 Ind Cas 236 But where he is in possession the value of the entire property determines the jurisdiction 72 Ind Cas 916, see also 10 C W N 565=3 C L J 197, 10 C W N 76, 10 C W N 664, 7 M I A 162, 17 C 680

Other suits—In order to determine the proper appellate Court what has to be looked at is the value of the original suit, *i e* the amount or value of the subject

matter of the suit 23 A L J 216=47 A 534 As this Act has not fixed any method of valuing a redemption suit, the amount of the principal debt must be taken as determining the jurisdiction under the Civil Courts Act 22 L W 408=(1925) M W N 747=A I R 1925 Mad 1254 In all cases falling under the operation of section 8, parties should first value their suits for the purposes of Court fees and when this has been done the valuation for purposes of Court fee will be the same for purposes of jurisdiction 45 A 419=22 A L J 349=79 Ind Cas 358 But this section does not cover redemption suits so that the valuation for the purposes of jurisdiction does not necessarily follow the valuation for the purposes of Court fees 28 C W N 710=78 Ind Cas 747=51 C. 737 A party is not entitled where the valuation of the suit can be correctly ascertained to put a purely fancy value for purposes of jurisdiction 6 Pat 597=8 Pat L T 475=101 Ind Cas. 506

Determination of value of certain suits by High Court

9 When the subject matter of suits of any class other than suits mentioned in the Court Fees Act, 1870, section 7, paragraphs v and vi, and paragraph x clause (*d*), is such that in the opinion of the High Court it does not admit of being satisfactorily valued the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purposes of the Court Fees Act, 1870 and of this Act and any other enactment for the time being in force, be treated as if their subject matter were of such value as the High Court thinks fit to specify in this behalf *

Notes—The powers conferred by this section if exercised are sufficient to ... aluation of any class of suits 13 M ... J 233 (F B)=15 Ind Cas 363 The ... were not intended to have retrospective ... pect to an appeal in a suit instituted before the rules came into force 31 P R 1909=49 P L R 1909=3 Ind Cas 404=36 P W R 1909 A suit for restitution of conjugal rights wherein the plaintiff also asks for an injunction restraining the two persons from preventing the alleged wife from living with the plaintiff can be instituted in a Court which has jurisdiction to try the suit for restitution of conjugal rights 20 P L R 1919 A suit for declaration that an adoption is invalid should be treated as of the value of the property of which title is affected, and not the title which is affected both for calculation of *ad valorem* Court fees payable and for purposes of jurisdiction 103 Ind Cas 268=A I R 1927 Nag 256

10 *[Repeal of s 32 Punjab Courts Act (XVIII of 1884)]—Repealed by the Repealing and Amending Act (XII of 1891)*

PART III

Supplemental Provisions

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes

11 (1) Notwithstanding anything in section 578 of the Code of Civil Procedure,† and objection that by reason of the over valuation or under valuation of a suit or appeal a Court of first instance of lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless—

(*a*) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or

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* For rules as to valuation of certain classes of suits under this section in—

(1) the Central Provinces—*See* Central Provinces List of Local Rules and Orders Ed 1896 p 246

(2) Oudh—*See* North Western Provinces and Oudh List of Local Rules and Orders, Ed 184 122

† XIV of 1882 See now Act V of 1908

(*b*) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over valued, or undervalued, and that the over valuation or under valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits

(2) If the objection was taken in the manner mentioned in clause (*a*) of sub-section (*1*), but the Appellate Court is not satisfied as to both the matters mentioned in clause (*b*) of that sub section, and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of the first instance or lower appellate Court

(3) If the objection was taken in at matter, and the Appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals, but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure* or other enactment for the time being in force

(5) This section extends to the whole of British India, and shall come into force on the first day of July, 1887.

Notes —This section applies to cases where the effect of the improper valuation has been to oust the jurisdiction of a Court of exclusive jurisdiction, and those where the plaintiff has designedly undervalued or overvalued his claim for getting a trial in a Court different from the one intended by the Legislature 24 C 661=1 C W N 556, see also 39 A 723=15 A L J 794, 6 M 140, 22 Ind Cas 614, 25 A 174, 31 C 344, 36 A 58=12 A L J 344 When the plaintiff cannot fix a valuation at his discretion this section has no application 214 P L R 1910, 47 P L R 1901; 56 Ind Cas 918 The effect of this section is simply to place overvaluation or under valuation of sales on same footing with other irregularities contemplated by s 578, Civil Procedure Code 1882 20 M L J 725=8 M L T 404=8 Ind Cas 545 Where the first appellate Court overlooks the provisions of this section the Chief Court generally remands the appeals 173 P L R 1003 Where the disposal of the suit has not been prejudicially affected, the case does not fall within this section and the High Court should not interfere 6 M L T 241=3 Ind Cas 440, 1 U B R (1897 1901) Vol II 443, 24 M 427, 24 M 43, 15 M L J 987, 25 A 174 If the value of the subject matter is not set out in definite terms in the plaint, this section would not apply 1 L B R 85 An appellate Court cannot entertain an objection which has not been raised in the first Court to the effect that the suit has not been properly valued and if properly valued the appellate Court had no jurisdiction to hear the appeal 2 C P L R 18 Where a Court of first instance tries a suit on account of arbitrary valuation thereof by plaintiff, no objection being taken to jurisdiction by the defendant, the appellate Court ought not to dismiss the suit 31 C 849=8 C. W N 705 The provisions of this section apply even if the plaintiff designedly exaggerates or understates the value of his claim for the purpose of choosing his own *forum* 21 Ind Cas 52, 16 O C 257 Where a suit which has been undervalued is tried by a Munsif's Court, the defendant can reasonably say that he has been prejudiced by the case being tried by a Court which had no jurisdiction to try it 47 Ind Cas 932 Where an objection to pecuniary jurisdiction of the lower appellate Court based on the [illegible] of the [illegible] High [illegible] on of [illegible] Courts [illegible] there [illegible] suit in [illegible] urt to

* XIV of 1882 See now Act V of 1908

decide what the correct valuation is 5 Pat. L J 337=1 Pat L T 390=66 Ind Cas 762 If the valuation put on the plaint for the purposes of jurisdiction is contested, the valuation must be decided by the Court (1921) Pat 105=5 Pat L J 397=66 Ind Cas 762 The expressions 'over valuation' and "under valuation' in this section include erroneous valuation caused by the application of the section of the Court Fees Act 62 Ind Cas 715 This section governs all cases of erroneous valuation irrespective of the question as to whether the value of the suit is determined [illegible]

under valued and that the over valuation or under valuation has prejudicially affected the disposal of the suit 100 Ind Cas 546=A. I R All 359

Proceedings pending at commencement of Part I, or Part II

12 Nothing in Part I, or Part II shall be construed to affect the jurisdiction of any Court—

(*a*) with respect to any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II have come into force, as the case may be, or

(*b*) with respect to any appeal arising out of any such suit

THE INDIAN TOLLS ACT (VIII OF 1851).

PASSED ON THE 4TH JULY, 1851

An Act for enabling Government to levy Tolls on Public Roads and Bridges

Preamble

WHEREAS it is expedient to enable Government to levy tolls upon roads and bridges, It is enacted as follows —

1 (*Repealed by Act XIV of 1870*).

Power to cause levy of tolls on roads and bridges within certain rates,

and to appoint collectors

2 The Governor of the Presidency of Fort William in Bengal, the Lieutenant Governor of the North Western Provinces of Bengal "and" * the Governor of the Presidency of Fort St George in Council † may cause such rates of toll, ‡as they respectively think fit, to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the Government, and may place the collection of such tolls under the management of such persons as may appear to them proper

Collector's responsibilities

and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the land revenue

Their powers for recovery of toll

3 In case of non payment of any such toll on demand, the officers appointed to collect the same may seize any of the carriages or animals on which it is chargeable, or any part of their burden of sufficient value to defray the toll, and, if any toll remains undischarged for twenty four hours, with the cost arising from such seizure, the case shall be brought before the officer appointed to superintend the collection of the said toll who may sell the property seized for discharge of the toll, and all expenses occasioned by such non payment, seizure and sale and cause any balance that may remain to

* Inserted by Act VIII of 1888

† Certain words repealed by Act VIII of 1888 have been omitted

‡ Certain words repealed by Act 38 of 1926 have been omitted

be returned, on demand, to the owner of the property, and the said officer, on receipt of the property, shall forthwith issue a notice that, at noon of the next day, exclusive of Sunday, or any close holiday, he will sell the property by auction

Release of seized property on tender of dues

Provided that, if, at any time before the sale has actually begun, the person whose property has been seized shall tender the amount of all the expenses incurred, and of double the toll payable by him, the said officer shall forthwith release the property seized

Exemptions from payment of toll

4 No toll shall be paid for the passage* of Police officers on duty, or of any person or property in their custody but no other exemption from payment of the tolls levied under this Act shall be allowed

Assistance of collectors by Police officers

5 All Police officers shall be bound to assist the toll collectors, when required, in the execution of this Act, and, for that purpose shall have the same power which they have in the exercise of their common police duties

Penalty for offences under Act

6 Every person other than the persons appointed to collect the tolls under this Act who shall levy or demand any toll on any public road or bridge or for passing through any bazar situated thereon and also every person who shall unlawfully and extortionately demand or take any other or higher toll than the lawful toll, or under colour of this Act seize or sell any property knowing such seizure or sale to be unlawful or in any manner unlawful extort money or any valuable thing from any person under colour of this Act shall be liable on conviction before a Magistrate to imprisonment for any term not exceeding six calendar months, or to fine not exceeding two hundred rupees, any part of which fine may be awarded by the Magistrate to the person aggrieved, but this remedy shall not be deemed to bar or affect his right to have redress by suit in the civil Court †

Compensation to person aggrieved Saving of his right to sue

Exhibition of table of tolls, and statement of penalties

7 A table of the tolls authorized to be taken at any toll gate or station shall be put up in a conspicuous place near such gate or station legibly written or printed in English words and figures, and also in those of [illegible] t, to which shall be annexed, written or [illegible] the penalties for refusing to pay the tolls

Application of proceeds of tolls

8 The tolls levied under [illegible] the [illegible] are levied

SCHEDULE

(Repealed by Act XXXVIII of 1920 Sch)

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* Certain words after this repealed by Act 2 of 1901 have been omitted

† Certain words after this repealed by Act XII of 1876 have been omitted

THE INDIAN TOLLS ACT (XV OF 1864)

PASSED ON THE 24TH MARCH, 1864

An Act to amend Act VIII of 1851 (for enabling Government to levy Tolls on Public Roads and Bridges)

WHEREAS by Act VIII of 1851 (*for enabling Government to levy tolls on Public Roads and Bridges*) authority was given for the levy of certain rates of toll, * it is enacted as follows —

Preamble

1 *Repealed by Act 38 of 1920*

2 Any person entrusted with the management of the collection of tolls under Act VIII of 1851 may in his discretion compound for any period not exceeding one year with any person for a certain sum to be paid by such person for himself or for any vehicle or animal kept by him in lieu of the rates of toll "authorised to be levied under the said Act VIII of 1851" †

Collectors of tolls may compound for tolls leviable under Act VIII of 1851 or this Act

3 The Local Government may extend this Act to any place in which the said Act VIII of 1851 is in force, and the Local Government of any place in which the said Act VIII of 1851 is not in force may extend the said Act VIII of 1851 and this Act to such place

Power to extend Act

4 For the purposes of this Act the words "Local Government" shall denote the person authorised by law to administer executive Government in any part of the territories vested in Her Majesty by the Statutes 21 and 22 Vict cap 106 entitled ' An Act for the better Government of India "

Interpretation clause Local Government

SCHEDULE

[*Repealed by Act XXXVIII of 1920, Sch*]

THE INDIAN TOLLS ACT, 1888

ACT NO VIII OF 1888

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 5TH SEPTEMBER 1888

An Act to remove doubts as to the legality of the levy of certain Tolls

WHEREAS doubts have been raised as to the operation of the Acts of the Governor General in Council, No VIII of 1851 (*an Act for enabling Government to levy tolls on Public Roads and Bridges*) and No XV of 1864 (*an act to amend Act VIII of 1851*), It is hereby enacted as follows —

1 Acts VIII of 1851 and XV of 1864 shall be deemed to be in force throughout the territories now administered by the Lieutenant Governor of the Punjab, and from the twenty first day of August, 1857, and the twenty fourth day of March, 1864, respectively, to have been in force in the territories for the time being administered as part of the Punjab

Enforcement of Acts VIII of 1851 and XV of 1864 in the Punjab

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* Certain words after this repealed by Act 38 of 1920 have been omitted

† Substituted by Act 38 of 1920

2 (1) In any part of British India beyond the limits of the territories administered by the Governor of Fort St George in Council, and the Lieutenant Governors of Bengal and the North Western Provinces, to or in which Acts VIII of 1851 and XV of 1864 may be or have been extended, or may be or have been declared to be in force under the latter of those Acts or by this Act or by or under any other enactment, the Local Government, shall be deemed to have and, where the Acts have been in force before the passing of this Act, to have had the same authority as if it had been included among the Local Governments specified in section 2 of Act VIII of 1851

Operation of the Act in the Punjab and certain other parts of British India

(2) "Presidency," where that word occurs in section 8 of Act VIII of 1851, shall be deemed to mean, and to have meant, the territories under the administration of a Local Government

3 All tolls levied or purporting to have been levied, under Acts VIII of 1851 and XV of 1864, or either of those Acts, before the passing of this Act, shall be deemed to have been lawfully levied

Validation of past levy of tolls

4 Nothing in the foregoing sections shall affect any proceedings commenced in any Civil Court before the first day of July, 1888

Saving

5 *In section 2 of Act VIII of 1851,* the word "and" shall be inserted* between the words "the Lieutenant Governor of the North Western Provinces of Bengal and the words 'the Governor of the Presidency of Fort St George in Council '

Amendment of section 2, Act VIII of 1851

THE TRADE DISPUTES ACT, 1929

ACT NO VII OF 1929

(Received the assent of the Governor General on the 12th April, 1929)

An Act to make provision for the investigation and settlement of trade disputes, and for certain other purposes

Whereas it is expedient to make provision for the investigation and settlement of trade disputes, and for certain other purposes hereinafter appearing, It is hereby enacted as follows —

Short title, extent, commencement and duration

1 (1) This Act may be called The Trade Disputes Act, 1929

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Paraganas

(3) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint †

Notes —The out break of industrial unrest on a large scale was a feature of the . . . . . rnment of India to explore . . . . ent of industrial disputes . . . . the conclusion that in the . . . . not likely to be effective . . . . . by reason of the growth

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* Certain words after this repealed by Act 12 of 1891 have been omitted

† Sub-section (4) limiting the duration of the Act for 5 years only has been omitted by Act 13 of 1934

of organizations of industrial workers and of the increasing influence exercised by public opinion on the course of disp

prepared a draft Bill for enabling the in

prepared for the purpose --*Statement of Objects and Reasons*

Interpretations

2 In this Act, unless there is anything repugnant in the subject or context,

(*a*) "Board' means a Board of Conciliation constituted under this Act,

(*b*) 'Court" means a Court of Inquiry constituted under this Act,

(*c*) "employer" in the case of any industry, business or undertaking carried on by any department of the Government, means the authority prescribed in this behalf or, where no authority is pre

(*d*) a person shall be deemed to

appointment as the chairman or othe

unconnected with the dispute with reference to which the Court or the Board is appointed and with any trade or industry directly affected by the dispute,

(*e*) 'lock out" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him, where such closing, suspension or refusal occurs in consequence of a dispute and is intended for the purpose of compelling those persons, or of adding another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment,

(*f*) "prescribed' means prescribed by rules made under this Act,

(*g*) "public utility service" means—

(*i*) any railway service which the Governor General in Council may, by notification in the *Gazette of India*, declare to be a public utility service for the purposes of this Act, or

(*ii*) any postal, telegraph or telephone service, or

(*iii*) any industry, business or undertaking which supplies light or water to the public, or

(*iv*) and system of public conservancy or sanitation,

(*h*) 'railway company" means a railway company as defined in section 3 of the Indian Railways Act, 1890,*

(*i*) "strike' means a cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue work or to accept employment,

(*j*) 'trade dispute' means any dispute or difference between employers and workmen, or between workmen and workmen which is connected with the employment or non employment or the terms of the employment, or with the conditions of labour of any persons, and

(*k*) "workman" means any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward, but does not include any person employed in the naval, military or air service of the Crown or in the Royal Indian Marine Service

Sub Clause (c)—From the wording of this clause it is clear that the definition of the word 'employer is not intended to be exhaustive —*Report of the Select Committee*

Sub Clause (d)—'In view of the provision which we have made in clause (4) that all the members of a Court of Inquiry shall be persons unconnected with the dispute or with any industry affected thereby, we have considered it desirable to

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* IX of 1890

give some definition of what we mean by the expression 'an independent person' and have inserted a definition accordingly as clause (d) of this clause' —*Report of the Select Committee*

Sub Clause (g) — 'We are of opinion that a wide power enabling the Government to declare any industry business or undertaking to be a public utility service [illegible] fore omitted it After con[illegible]ying certain other indus[illegible]eached the conclusion that [illegible] comprised all the services [illegible]n view of the fact that the [illegible] power which the Bill as introduced conferred upon the Government is only exerciseable after three months' notice, we think there should be no difficulty in providing for any necessary additions to the clause by an amendment of the Act should occasion arise'—*Report of the Select Committee*

Clause (k) — 'We have amplified the definition of workman on the lines of the smilar definition in the Canadian Act and at the same time made it clear that the expression includes clerical workers, and we have added the Royal Indian Marine Service to the services which the Bill excludes from its scope"—*Report of the Select Committee*

Reference of Disputes to Courts and Boards

Reference of disputes to Courts or Boards

3 If any trade dispute exists or is apprehended between an employer and any of his workmen, the Local Government or, where the employer is the head of a department under the control of the Governor General in Council or is a Railway Company, the Governor General in Council may, by order in writing —

(*a*) refer any matters appearing to be connected with or relevent to the dispute to a Court of Inquiry to be appointed by the Local Government or the Governor General in Council, as the case may be; or

(*b*) refer the dispute to a Board of Conciliation to be appointed by the Local Government or the Governor General in Council, as the case may be, for promoting a settlement thereof

Provided that, where both parties to the dispute apply, whether separately or conjointly, for a reference to a Court or where both parties apply whether separately or conjointly for a reference to a Board and the authority having the power to appoint is satisfied that the persons applying represent the majority of each party, a Court or a Board as the case may be, shall be appointed accordingly

Notes —The main part of the Bill falls into three parts Clauses 3 to 14 relate to the establishment of tribunals for the investigation and settlement of trade disputes This part of the Bill is based generally on the British Industrial Courts Act of 1919 and its detailed provisions are adopted for the most part from clauses in that Act The main difference is that, whereas the British Act sets up a standing Industrial Court, the Conciliation Boards which the Bill purposes to establish are intended to be appointed *ad hoc* like the Courts of Inquiry in order to deal with particular disputes —*Statement of Objects and Reasons*

"We have considered various proposals designed to lay upon the Government a definite obligation to convene a Court of Inquiry or a Board of Conciliation in cases where one of the parties so required We think however, that unless both parties are agreed in desiring a reference it would be useless to fetter the discretion of the Government as to the time at which the matter is ripe for action under this clause At the same time, we think that no option should be left to the Government to refuse to appoint a Court or Board where the Government is assured that both parties are agreed as to the necessity of a reference as well as to the form which it should take —*Report of the Select Committee*

Courts of Inquiry.

Constitution of Courts

4 (1) A Court shall consist of an independent chairman and such other independent persons as the appointing authority thinks fit, or may, if such authority thinks fit, consist of one independent person.

(2) A Court, having the prescribed quorum may act notwithstanding any vacancy in the number of its members other than the chairman.

Notes.—This section lays down as to how a Board is to be constituted As regards the definition of the word 'independent,' vide clause (d) of section 2 Two things are necessary for a Court to act namely (1) *quorum* and (2) appointment of Chairman When a Chairman is appointed it can proceed to perform its functions notwithstanding the fact that there is a vacancy in the number of its members As already mentioned, we have provided that in every case a Court of inquiry whether it consists of one or more persons, shall not include persons having any interest in the dispute or any industry affected by it —*Report of the Select Committee*

5 (1) A Court shall, either in public or in private, at its discretion, inquire into the matters referred to it and report thereon to the authority by which the Court was appointed

Duties of Courts

(2) A Court may, if it thinks fit, make *interim* reports

Notes—The object of Courts of inquiry which will ordinarily be composed of persons having no direct interest in the dispute will be to investigate and report on such questions connected with dispute as may be referred to them—*Statement of Objects and Reasons*

Boards of Conciliation

6 (1) A Board shall consist of a chairman and two or four other members, as the appointing authority thinks fit, or may, if such authority thinks fit, consist of one independent person

Constitution of Boards

(2) Where the Board consists of more than one person, the chairman shall be an independent person and the other members shall be either independent person or persons appointed in equal numbers to represent the parties to the dispute all persons appointed to represent any party shall be appointed on the recommendation of that party

Provided that, if any party fails to make the necessary recommendation within the prescribed time the appointing authority shall select and appoint such persons as it thinks fit to represent that party

(3) A Board having the prescribed quorum, may act notwithstanding any vacancy in the number of its members other than the chairman

Provided that, where a Board includes an equal number of persons representing the parties to the dispute and the services of any such person cease to be available before the Board has completed its work, the authority appointing the Board shall appoint, in the manner specified in sub section (2) another person to take his place, and the proceedings shall be continued before the Board so reconstituted

Notes—A Board of Conciliation may consist of (1) one independent person or (2) one chairman who must be an independent person and two or four other members In the latter case the members may be either independent persons or may be persons appointed in equal numbers to represent the parties to the dispute When the prescribed quorum is present the Board is entitled to act notwithstanding any vacancy of its members provided the chairman is duly appointed We have made an amendment to sub clause (2) to make clear the original intention which was that only persons appointed to a Board to represent the parties should be appointed on the recommendation of the parties and we have made slight alterations in the proviso to sub clause (3) in order to bring it into line with the wording of clause 10 —*Report of the Select Committee*

7 (1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits thereof

Duties of Boards

and the right settlement thereof, and in so doing may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute, and may adjourn the proceedings for any period sufficient in its opinion to allow the parties to agree upon terms of settlement

(2) If a settlement of a dispute is arrived at by the parties thereto after it has been referred to a Board and during the course of the investigation thereof, a memorandum of the settlement shall be drawn up by the Board and signed by the parties, and the Board shall send a report of the settlement, together with the memorandum, to the authority by which the Board was appointed

(3) If no such settlement is arrived at during the course of the investigation, the Board shall as soon as possible after the close thereof, send a full report regarding the dispute to the authority by which the Board was appointed, setting forth the proceedings and steps taken by the Board for the purpose of ascertaining the facts and circumstances relating to the dispute and of bringing about a settlement thereof, together with a full statement of such facts and circumstances and its findings thereon and the recommendation of the Board for the determination of the dispute

(4) The recommendation of the Board shall deal with each item of the dispute, and shall state in plain language what in the opinion of the Board ought and ought not to be done by the respective parties concerned

Notes—This object of Boards of Conciliation, which will ordinarily include [illegible] dispute, will be to secure a settlement of the [illegible] and Reasons Neither party will be under any [illegible]rs of the Court or the advice of the Board, and in [illegible] brought to an end during the deliberations of the [illegible]d reliance is placed on the force of public opinion [illegible] publication of the report of the tribunal to arrive at just conclusions on the merits of the dispute *Ibid*

General.

8 No order of the Governor General in Council or of a Local Government appointing any person as a member of a Court or a Board shall be called in question in any manner

Finality of orders constituting a Court or Board

9 (1) Courts and Boards shall, subject to the provisions of this Act, follow such procedure as may be prescribed

Procedure and powers

(2) Courts and Boards shall have the same powers as are vested in Courts under the Code of Civil Procedure, 1908,* when trying a suit in respect of the following matters

(*a*) enforcing the attendance of any person and examining him on oath ,

(*b*) compelling the production of documents and material objects , and

(*c*) issuing commissions for the examination of witnesses ;

and shall have such further powers as may be prescribed , and every inquiry or investigation by a Court or Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code †

Notes—Both Courts of Inquiry and Boards of Conciliation will be able to enforce attendance of witnesses and the production of documents, and their reports are to be published —*Statement of Objects and Reasons*

10 (1) If the services of the Chairman or of any other independent member of a Court or Board cease to be available at any time for the purposes of the Court or Board, the appointing authority shall in the case of a Chairman,

Filling of vacancies

* V of 1908 † XLV of 1860

and may in the case of any other member, appoint another independent person to fill the vacancy, and the proceedings shall be continued before the Court or Board so re constituted

(2) Where the Court or Board consists of one person only and his services cease to be available as aforesaid, the appointing authority shall appoint another independant person in his place, and the proceedings shall be continued before the person so appointed

Notes — In view of the fact that members of Courts and Boards will now invariably be independent persons except in the case where a Board is composed of an independent chairman and an equal number of representatives of each party and that the case of a vacancy in the office of any such representative member is already dealt with in clause 6, clause 10 will now apply to independent members only, and we have amended it accordingly —*Report of the Select Committee*

Form of report

11 The report of a Court or Board shall be in writing and shall be signed by all the members of the Court or Board

Provided that nothing in this section shall be deemed to prevent any member of a Court or Board from recording a minute of dissent from a report or from any recommendation made therein

Notes —The report of the Court or Board must be in writing but it need not be unanimous

Publication of results of inquiry

12 (1) The final and any interim report of a Court or Board, together with any minute of dissent recorded therewith, shall, as soon as possible after its receipt by the authority by which the Court or Board was appointed, be published by that authority in such manner as it thinks fit

(2) The said authority may publish or cause to be published from time to time, in such manner as such authority thinks fit, any information obtained, or conclusions arrived at by the Court or Board as the result or in the course of its inquiry or investigation

Notes —The report of Court or Board is to be published —*Statement of Objects and Reasons* 'We have amended this clause on the lines of the English Act to make it quite clear that every report of a Court or Board, whether a final or interim report, must be published, and that only the publication of such information or evidence as the appointing authority thinks fit should be left to its discretion — *Report of the Select Committee*

Certain matters to be kept confidential

13 (1) Notwithstanding anything contained in section 12, there shall not be included in any report or publication made or authorised by a Court or Board or the authority appointing a Court or Board any information obtained by the Court or Board in the course of its inquiry or investigation as to any Trade Union or as to any individual business (whether carried on by a person firm or company) which is not available otherwise than through evidence given before the Court or Board "if the Trade Union, person, firm or company in question has preferred a request to the Court or Board that such information shall be treated as confidential ',* nor shall any individual member of the Court or Board or any person concerned in the proceedings before it disclose any such information 'without the consent in writing of the Secretary of Trade Union or the person, firm or company in question, as the case may be '*

(2) If any member of a Court or Board or any person present at or concerned in the proceedings before a Court or Board 'wilfully'† discloses an information in contravention of the provisions of sub section (1), he shall, on

* Substituted by Act 19 of 1932 † Inserted by Act 19 of 1932

complaint made by or under the authority of the Trade Union or individual business affected, be punishable with *fine which may extend to one thousand* rupees

Provided that nothing i- this sub-section shall apply to the disclosure of any such information for the purpose of a prosecution under section 193 of the Indian Penal Code

"(3) No criminal Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this section

(4) No criminal Court shall take cognigance of any offence under this section except with the previous sanction of the authority appointing su h Court or Board, and no civil Court shall without the like sanction entertain any suit against a member of a Court or Board, or any person present at or concerned in the proceedings before a Court or Board, for any matter arising out of such proceedings"

Notes—*Not only members of a Court or Board but also any person present at or concerned in the proceeding before a Court or Board shall be punishable for dis closing any information in contravention of the provision of sub section (1)*

Representation of parties

14 Subject to such *conditions and restrictions as may* be *prescribed*, any party to a dispute under inquiry or investigation by a Court or Board shall be entitled to be represented before the Court or Board by a legal practitioner

Notes—"We consider it inadvisable to forbid the representation of parties before Courts and Boards by legal practitioners subject only to exception As we have redrafted the clause such representation will ordinarily be permissible, subject however to such conditions and restrictions as may be provided by rules"—*Report of the Select Committee*

Special Provision regarding Public Utility Services

Sudden strikes and lockouts in utility services

15 (1) Any person who, being employed in a public utility service goes *on strike in* breach of contract without having given to his employer, within *one* month before so striking not less than fourteen days previous [illegible] or, having given such notice, [illegible] punishable with imprisonment which may exten [illegible] ich may extend to fifty rupees, or with both

(2) *Any employer carrying on any public utility service* who locks out his workmen in breach of contract without having given them, within one month before such lockout, not less than fourteen days notice in writing on his inten tion to lock them out or, having given such notice locks them out before the ex[illegible] which *may* extend to one month or [illegible] rupees, or with both

[illegible] ffence under sub section (2) is a corporation, company or other associatio [illegible] persons any secretary, director or other officer or person concerned with the management thereof shall be punish able as therein provided unless he proves that the offence was committed with [illegible] ledge or w thout his consent

[illegible] nce of any offence under this section or [illegible] save on complaint made by or under aut [illegible] l in Council or the Local Government [illegible] esidency Magistrate or a Magistrate of [illegible] der this section

Notes—"*The second part of the Bill cons sts of clause 15* which relates to public utility services '*Public utility services*' is *defined in* clause 2 (f), and it *will be observed that, in accordance with this definition* clause 15 is only appl cable to such railway services as have been *notified by the Governor in* Co ncil The

clause makes it penal offence for workers employed on monthly wages in public utility services to strike without previous notice The clause is based on the principle that persons whose work is vital to the welfare of the community generally should not be entitled to enter into a strike before sufficient time has been given to examine the merits of their grievances and to explore the possibilities of arriving at a ... somewhat similar type already exists in ... r of Municipal Acts in India, and the ... n other countries —*Statement of Objects* ... the principle of this clause which how ... certain criticisms For example, it was pointed out that many persons are actually employed upon daily wages which is in practice paid monthly, also that the clause would appear to penalise abstention from work on the part of a particular individual, and further that the clause is one sided and inflicts no penalty upon an employer who locks out his workmen The latter part is we think, one which must certainly be met and as by the nature of his employment as casual or day to day labourer he must be entitled to cease work at any moment and be similarly liable to dismissal we agree that he should be excluded altogether from the operation of this clause We have accordingly adopted a suggestion made by the Bombay Government which makes it clear that the cessation of work must be in the nature of a strike as defined in the Bill and we have provided that in order to render it penal offence the strike must be in breach of a definite contract between the employer and the workmen, we have further made a collateral provision penalising an employer for locking out his workmen in breach of any contract We have decided to omit sub clause (2) of the Bill as introduced which imposed a severe penalty upon the abetter of an offence under sub clause (1) as we think such persons can be sufficiently dealt with under the ordinary criminal law of abetment'—*Report of the Select Committee*

Special provision for Illegal Strikes and Lockouts

Illegal strikes and lockouts

16 (1) A strike or lockout shall be illegal which—

(*a*) has any object other than the furtherance of a trade dispute within the trade or industry in which the strickers or employers locking out are engaged, and

(*b*) is designed or calculated to inflict, severe, general and prolonged hardship upon the community and thereby to compel the Government to take ... ction,

... ntinue, or to apply any sums in ... strike or lockout

(*a*) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen or between workmen and workmen in that trade or industry which is connected with the employment or non employment or the terms of the employment or with the conditions of labour, of persons in that trade or industry,

(*b*) without prejudice to the generality of the expression 'trade or industry," workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with agreements made with the same employer or group of employers

(4) A strike or a lockout shall not be deemed to be calculated to compel the Government unless such compulsion might reasonably be expected as a consequence thereof

... egal strikes ... , 2 and 7 of ... icable only ... in the first place, the strike or lockout must have other objects than the mere furtherance of a trade dispute within the industry to which the strikers or employers belong and, in the second place, the strike or lockout must be designed to coerce Government

either directly or by inflicting hardship on the community If these conditions are satisfied the strikes or lockouts are liable to punishment and are deprived of the protection granted to them by the Indian Trade Unions Act while persons refusing to take part in it are protected from trade union disabilities to which they might otherwise be subjected' —*Statement of Objects and Reasons*

Section 16 — 'We have adopted this clause but with some amendments which we think will restrict its scope without materially impairing its effectiveness Our attention has been practically directed to the provision of clause (*b*) of sub clause (1), which, as drafted we consider to be too wide and uncertain in its meaning It is possible to hold that any strike inflicts a certain degree of hardship upon the community, and it would therefore be possible for a strike which fulfils both the conditions in (*a*) and (*b*) to be brought within this clause, although it was in the nature of a demonstration and lasted for no more than one day The amendments which we suggest apart from the omission in clause (*a*), of the words 'or in addition to' accordingly make it clear that the strike or lockout must be designed to cause really severe, general and prolonged hardship to the community for the purpose of compelling Government to take any particular action, whether in connection with the dispute or otherwise In sub clause (2) we have made it clear that, for the application of money to be illegal it must not merely tend to further or support the strike but have direct effect of so doing This is intended to exclude a case in which money is spent upon the relief of the dependants of strikers In sub clause 3 we have borrowed a provision from the English Act of 1927 further explaining the circumstances in which a group of workmen should be deemed to be within the same trade or industry.—"*Report of the Select Committee*

Penalty

17 (1) If any person declares, instigates, incites others to take part in, or otherwise acts in furtherance of, a strike or lock out which is illegal under the provisions of section 16, he shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to two hundred rupees, or with both

Provided that no person shall be deemed to have committed an offence under this section by reason only of his having ceased to work or refused to continue to work or to accept employment

(2) No Court shall take cognizance of any offence under this section save on complaint made by, or under authority from, the Governor General in Council or the Local Government

(3) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this section

Notes —' We have somewhat modified the penalties provided for the instigation of an illegal strike' —*Report of the Select Committee*

Protection of persons withholding from illegal strike or lockout

18 (1) No person refusing to take part, or to continue to take part in any strike or lockout which is illegal under the provisions of section 16 shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a Trade Union or society notwithstanding

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right of exemption secured by this section, and in any such proceedings the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just

Rules

Power to makes rules

19. (1) The Governor General in Council in respect of industries, businesses and undertakings carried on by him or under his authority, or by a railway company, and the Local Government in respect of other businesses industries or undertakings within their respective provinces, may make rules for the purpose of giving effect to the provisions of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely :—

(a) the powers and procedure of Courts and Boards, including rules as to the summoning of witnesses the production of documents relevant to the subject matter of an inquiry or investigation and the number of members necessary to form a quorum ;

(b) the allowances admissible to members of Courts and Boards and to witnesses ,

(c) the ministerial establishment which may be allotted to a Court or Board and the salaries and allowances payable to members of such establishments ,

(d) the conditions and restrictions subject to which persons may be represented by legal practitioners in proceedings under this Act before a Court or Board ,

(e) any other matter which is to be or may be prescribed

(3) All rules made under this section shall be published in the *Gazette of India* or the local official Gazette, as the case may be, and shall, on such publication, have effect as if enacted in this Act

Notes— The only alteration which we have made in this clause is consequential upon the amendment made to clause 14 —*Notes on Clauses*

THE INDIAN TRADE UNIONS ACT, 1926.

ACT NO. XVI OF 1926

[RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 25TH MARCH, 1926]

An Act to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions in British India

WHEREAS it is expedient to provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions in British India , It is hereby enacted as follows —

Notes —' This Bill has been prepared in response to the following Resolution which was adopted by the Legislative Assembly on 1st March, 1922 —

"1 This Assembly recommends to the Governor General in Council that he should take steps to introduce, as soon as practicable in the Indian Legislature such legislation as may be necesaary for the registration of trade unions and for the protection of trade unions

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CHAPTER I

Preliminary.

Short title extent and commencement

1 (1) This Act may be called the Indian Trade Unions Act, 1926

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

(3) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India,* appoint

Definition

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "executive" means the body, by whatever name called, to which the management of the affairs of a Trade Union is entrusted ,

(*b*) "officer," in the case of a Trade Union, includes any member of the executive thereof but does not include an auditor ,

(*c*) "prescribed" means prescribed by regulations made under this Act ,

(*d*) 'registered office' means that office of a Trade Union which is registered under this Act as the head office thereof ,

(*e*) 'Registered Trade Union' means a Trade Union registered under this Act ,

(*f*) "Registrar" means a Registrar of Trade Unions appointed by the Local Government under section 3, and "the Registrar," in relation to any Trade Union, means the Registrar appointed for the province in which the head or registered office, as the case may be, of the Trade Union is situated ;

(*g*) "trade dispute' means any dispute between employers and workmen or between workmen and workmen or between employers and employers which is connected with the employment or non employment, or the terms of employment or the conditions of labour, of any person, and "workmen' means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises , and

(*h*) "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or employers and between employers or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more Trade Unions

Provided that this Act shall not affect—

(*i*) any agreement between partners as to their own business ,

(*ii*) any agreement between an employer and those employed by him as [illegible]

[illegible] in of the sale of the goodwill of a trade or handicraft

Clause (g) —This definition is taken from section 5 of the British Trade Disputes Act, 1906—*Notes on Clauses* See also the National Insurance Act, 1911 [1 & 2 [illegible] A C 495 , *Dalmore* v *Williams* [illegible] something fairly definite and of real [illegible] *Conway* v *Wade*, (1909) A C 506 , [illegible] K B 547 In *Conway* v *Wade* ubi [illegible] to hold that trade dispute, necessarily [illegible] ren e between any one workman and [illegible] certain stage even such a dispute, although originally grounded it may be upon personal animosity may come to be a subject in which sides are taken, and may develop into a situation of a general aspect containing the characteristics of a trade dispute , but until it reaches that stage I cannot hold that a trade dispute necessarily exists"

Clause 2 (h) —This definition is based on that contained in section 23 of the British Trade Unions Act 1871 As to the meaning of regulation, *vide Gozni* v *Bristol Trade & Provident Society* (1909) 1 K B 900 C A , *Osborne* v. *Amalgamated Society of Railway Servants* (1909) 1 Ch 163 C A

CHAPTER II

Registration of Trade Unions

Appointment of Registrars

3 Each Local Government shall appoint a person to be the Registrar of Trade Unions for the province

Notes —Registrars of Trade Unions are appointed by the Local Governments

Mode of registration

4 Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act

Notes —Registration s purely voluntary and it is open to a registered trade union to apply for cancellation of registration at any time—*Notes on Clauses* For the forms of application, *vide* Encyclopaedia of Forms and Precedents, Vol XIV, p 515

Application for registration

5 (1) Every application for registration of a Trade Union shall be made to the Registrar and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely —

(*a*) the names, occupations and addresses of the members making the application ,

(*b*) the name of the Trade Union and the address of its head office , and

(*c*) the titles, names, ages, addresses and occupations of the officers of the Trade Union

(2) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar together with the application a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed

Notes —This section corresponds to ss 13 (1) and 17 of the British Trade Unions Act 1871 The information is required to enable the Registrar to satisfy himself that the organization applying for registration is a Trade Union and that its rules satisfy the requirement of clause 6 —*Notes on Clauses*

Provisions to be contained in the rules of a Trade Union

6 A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provide for the following matters, namely —

(*a*) the name of the Trade Union ,

(*b*) the whole of the objects for which the Trade Union has been established ,

(*c*) the whole of the purposes for which the general funds of the Trade

ses shall be purposes to which such

members of the Trade Union and by the officers and members of the Trade Union ,

(*e*) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected,

and also the admission of the number of honorary or temporary members as officers required under section 22 to form the executive of the Trade Union,

(*f*) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be impo sed on the members,

(*g*) the manner in which the rules shall be amended, varied or rescinded,

(*h*) the manner in which the members of the executive and the other officers of the Trade Union shall be appointed and removed,

(*i*) the safe custody of the funds of the Trade Union, an annual audit in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the officers and members of the Trade Union; and

(*j*) the manner in which the Trade Union may be dissolved

Notes—This is adopted from the First Schedule of the British Trade Union Act, 1871 In deciding whether any association comes within the definition of a Trade Union its objects and rules must be read as a whole *Chamberlain's Warf* v *Smith* (1900) 2 Ch 605 The objects which could be specified in the rules included only objects strictly within the scope of the Trade Unions Act [(1910) A C 87 96] and the rules were held to constitute an exhaustive Code (1900) 17 T L R 39 C A, (191) 1 Ch 259 266

Power to call for further particulars and to require alteration of name

7. (1) The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section 6, and may refuse to register the Trade Union until such information is supplied

(2) If the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made

Notes—An application to register and printed copies of the rules with a test of the titles and names of the officers, must be sent to Registrar who upon being satisfied that the union has complied with the regulations in force respecting registry, must register, the Union and the rules [*Vide* ss 13 (1), 13(1) 17 of the Trade Unions Act, 1871] Sub section (2) corresponds to section 13(3) of the Trade Unions Act, 1871, *Cf* also *R* v *Registrar of Friendly Societies* (187) L R 7 B 741

Registration

8 The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accom panying the application for registration

Notes—The Registrar may not register any combination as a Trade Union unless in his opinion having regard to the constitution of the combination its principal objects are statutory objects *British Trade Unions Act, 1913, s 2 (1)*

Certificate of registration

9 The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act

Notes—The Registrar, on registering the Union, issue a certificate which, un less known to have been withdrawn or cancelled is conclusive evidence that the

regulations with respect to registry have been complied with *Vide* s 13(4) of the British Trade Unions Act, 1871

Cancellation of registration

10 A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar—

(*a*) on the application of the Trade Union to be verified in such manner as may be prescribed, or

(*b*) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provisions, or has rescinded any rule providing for any matter provision for which is required by section 6

Provided that not less than two months previous notice in writing specifying the ground on which it is proposed to withdraw or cancell the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union

Notes—Until the withdrawal or cancellation of its certificate a registered Union can be sued in its registered name notwithstanding that one of its objects is illegal (1913) 1 Ch 366

Appeal

* "**11** (1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed appeal—

(*a*) where the head office of the Trade Union is situated within the limits of a Presidency town or of Rangoon, to the High Court, or

(*b*) where the head office is situated in any other area to such Court not inferior to the Court of an additional or assistant Judge of a principal Civil Court of original jurisdiction, as the Local Government may appoint in this behalf for that area

(2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9, or setting aside the order for withdrawal or concellation of the certificate, as the case may be, and the Registrar shall comply with such order

(3) For the purpose of an appeal under sub section (1), an appellate Court shall so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure, 1908, and may direct by whom the whole or any part of the costs of the appeal shall be paid and such costs shall be recovered as if they had been awarded in a suit under the said Code

(4) In the event of the dismissal of an appeal by any Court appointed
e a right of
pose of such
(2) and (3),

Registered office

12 All communications and notices to a registered Trade Union may be addressed to its registered office Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing, and the changed address shall be recorded in the register referred to in section 8

Notes—This section corresponds to section 15 of the British Trade Union Act, 1871 Apparently this provision does not in itself confine the union to the jurisdiction of the Courts within whose jurisdiction the office is situated *Mackendrick* v

* Substituted by Act XV of 1928

National Union of the Dock Labourers, (1910) 141 Sc. L R 17, *Halsbury* Vol 27, p 625

Incorporation of registered Trade Union

13 Every registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual success on and a common seal with power to acquire and hold both movable and immovable property and to contract, and shall by the said name sue and be sued

Notes —In England the Trade Unions were not the creation of statute (1909) [illegible] were [illegible] neral [illegible] 600 [illegible] and [illegible] ody, [illegible] R. 67, (1912) (A C) 421

Certain Acts not to apply to registered Trade Unions

14 The following Acts, namely —

(a) [illegible]
(b) [illegible]
(c) [illegible]
(d) [illegible] 1912, and
(e) [illegible]

shall not apply to any registered Trade Union, and the registration of any such Trade Un[illegible] t shall be void.

[illegible] the existing registration of a Trade Union und[illegible] has secured registration under the Trade Un[illegible]

CHAPTER III

Rights and Liabilities of registered Trade Unions

Objects on which general funds may be spent

15 The general funds of a registered Trade Union shall not be spent on any other objects than the following namely :—

(a) the payment of salaries, allowances and expenses to officers of the Trade Union,

(b) the payment of expenses for the administration of the Trade Union, including audit of the account of the general fund of the Trade Union,

(c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs,

(d) the conduct of trade disputes on behalf of the Trade Union or any member thereof,

(e) the compensation of members for loss arising out of trade disputes

(f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members ;

(g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or un employment,

* XXI of 1860 † II of 1912 ‡ V of 912
§ VI of 1912 ‖ VII of 1913

(*h*) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members ,

(*i*) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such ,

(*j*) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year ; and

(*k*) subject to any, conditions contained in the notification, any other object notified by the Governor General in Council in the *Gazette of India*

Notes —The objects on which the funds may be spent have been limited to [illegible] on objects As, however, the [illegible] is proposed to empower the [illegible] his will make it possible to [illegible] ade Unions if the development —*Notes on Clauses*

Constitution of a separate funds for political purpos s

16 (1) A registered Trade Union may constitute a soparate fund, from contribut ons separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub section (2)

(2) The objects referred to in sub section (1) are —

(*a*) the payment of any expenses incurred, either directly or indirectly by a candidate or prospective candidate for election as a member of any legislative body constituted under the Government of India Act or of any local authority, before, during, or after the election in connection with his candidature or election , or

(*b*) the holding of any meeting or the dis ribution of any literature or documents in support of any such candidate or prospective candidate , or

(*c*) the maintenance of any person who is a member of any legislative body constituted under the Government of India Act or of any local authority , or

(*d*) the registration of electors or the selection of a candidate for any legislative body constituted under the Government of India Act or for any local authority , or

(*e*) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind

(3) No member shall be compelled to contribute to the fund constituted under sub-section (1), and a member who does not contribute to the said fund shall not be excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other memb rs of the Trade [illegible] t of the said fund) by contribution to the said Trade Union.

Notes —This clause is based on section 3 (3) of the British Trade Unions Act, 1913

Criminal conspiracy in trade disputes

17. No officer or member of a registered Trade Union shall be liable to punishment under Sub section (2) of section 120B of the Indian Penal Code, in respect of any agreement made between the members for the

purpose of furthering any such objects of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence

Notes —Under the existing criminal law an agreement to do an illegal act is itself a criminal offence "Illegal acts" includes all acts which provide ground for civil actions Thus for example, two men who agree to pursuade workmen to break their contracts with their employers are guilty of criminal conspiracy The clause which is similar in its effects to the corresponding provisions of the English law, protects Trade Unions from prosecutions for criminal conspiracy where the agreement into which they have entered is not an agreement to commit an offence —*Notes on Clauses*, see also (1909) 1 K B 901 C A ; 23 Q B D 598 ; (1891) 2 Q B 549 When no trade dispute can be shown to exist a general strike called by the Trade Union Congress is illegal. (1926) 1 Ch 536

18 (1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or of any officer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of the capital or of his labour as he wills

Immunity from civil suit in certain cases

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by the executive of the Trade Union

Notes —The first part of this clause corresponds to sections 1 and 3 of the British Trade Disputes Act, 1906, and protects trade unions and their officers and members from certain civil actions An important type of action which this clause will prevent is a suit arising out of the persuasion exercised on Trade Union members and others to joint in a strike where that strike (as is frequently the case) involves breach of contract on the part of workmen. The second part of this clause gives Trade Unions a large measure of immunity from liabilities arising out of acts of their agents, and is in accordance with a recommendation made by the majority of the Royal Commission on Trade Disputes and Trade Combinations in England in 1906 —*Notes on Clauses*, see also (1892) A C 25, (1900) 82 L T 769, (1903) 19 T L R 360, (1909) A C 506

19 Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of the registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade

Enforceability of agreements

Provided that nothing in this section shall enable any Civil Court to entertain any legal proceedings instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall sell their goods, transact business, work, employ or be employed

[illegible] and 3 of the British Trade [illegible] f section 4 of that [illegible] benefit withheld [illegible] ce or not to strike [illegible]

20 The account books of a registered Trade Union and the list of members thereof shall be open to inspection by an officer or member of the Trade Union at such times as may be provided for in the rules of the Trade Union

Right to inspect books of Trade Union.

Notes —This clause is designed to enable members of Trade Unions to exercise supervision over the financial conduct of the union, if they so desire —*Notes on Clauses* The right to inspect the books may in a proper case be exercised by the agency of an accountant, subject to an undertaking by him to divulge the information so obtained only to his clients *Norey v Keep* (1909) 1 Ch. 56, see also *Bevan* v *Webb* (1901) 2 Ch 59 C A

Rights of minors to membership of Trade Unions

21 Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules

Provided that no person who has not attained the age of eighteen years shall be an officer on any such Trade Union.

Notes —It is desirable that members and officers of registered Trade Unions should have attained an age sufficient to enable them to discharge their responsibi-[illegible] Bill —*Notes on Clauses* A member [illegible] power to expel and if such power [illegible] opportunity of obtaining a hearing [illegible] 27, p 627

Proportion of officers to be connected with the industry

22 Not less than one half of the total number of the officers of every registered Trate Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected

Provided that the Local Government may, by special or general order declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order

Notes —This provision is intended to ensure that those for whose benefit the Trade Union exists participate in its control —*Notes on Clauses*

Change of name

23. Any registered Trade Union, may, with the consent of not less than two thirds of the total number of its members and subject to the provisions of section 25, change its name

Notes —This section corresponds to section 11 of the British Trade Unions (Amendment) Act, 1876 (39 & 40 Vict, c 22)

Amalgamation of Trade Unions

24 Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty per cent of the votes recorded are in favour of the proposal

Notes —This section corresponds to section 12 of the British Trade Unions (Amalgamation) Act —*Notes on Clauses* An injunction will be granted to restrain amalgamation if necessary consent is not shown *Wolfe* v *Mathews* (1882) 30 W R 838

Notice of change of name or amalgamation

25 (1) Notice in writing of every change of name and every amalgamation, signed in the case of a change of name, by the Secretary and by seven members of the Trade Union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto, shall be sent to the Registrar, and where the head office of the amalgamated Trade Union is situated in a different province, to the Registrar of such province.

(2) If the proposed name is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly

resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall refuse to register the change of name

(3) Save as provided in sub section (2), the Registrar shall, if he is satisfied thas the provisions of this Act in respect of change of name have been complied with, *register the change of name in the register referred to in section 8, and* the change of name shall have effect from the date of such registration

(4) The Registrar of the province in which the head office of the amalgamated Trade Union is situated shall, if he is satisfied that the provisions of this Act in respect of amalgamation have been complied with and that the Trade Union formed thereby is entitled to registration under section 6, register the Trade Union in the manner provided in section 8, and the amalgamation shall have effect from the date of such registration.

Notes—This section corresponds to section 11 and 13 of the British Trade Unions (Amendment) Act, 1876 (39 & 40 Vict, c 22)

Effects of change of name and of amalgamation

26 (1) The change in the name of a registered Trade Union shall not affect any rights or obligations of the Trade Union or render defective any legal proceeding by or against the Trade Union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name

(2) An amalgamation of two or more registered Trade Unions shall not prejudice any right of any such Trade Unions or any of right of a creditor of any of them

Notes—This section corresponds to section 13 of the British Trade Unions (Amendment) Act 1876 (39 and 40 Vict, c 22)

Dissolution

27 (1) When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution, be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such registration

(2) Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed

Notes—Sub-section (1) corresponds to s 14 of the British Trade Unions (Amendment) Act, 1876 (39 and 40 Vict c 22) The funds should be divided among the members in proportion to the amounts contributed by each of them, disregarding amounts paid for fines forfeitures or annuities (1899) 2 Ch 184

Returns

28 (1) There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement audited in the prescribed manner, of all receipts, and expenditure of every registered Trade Union during the year ending on the 31st day of March next preceding such prescribed date and of the assets and liabilities of the Trade Union existing on such 31st day of March The statement shall be prepared in such form and shall comprise such particulars as may be prescribed

(2) Together with the general statement there shall be sent to the Registrar a statement showing all changes of officers made by the Trade Union during the year to which the general statement refers, together also with a copy of the rules of the Trade Union corrected up to the date of the despatch thereof to the Registrar

(3) A copy of every alteration made in the rules of a registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration

[illegible] of Trade Union members [illegible] extraneous objects The [illegible] is required to enable the Registrar to satisfy himself that the union continues to observe the provisions of the Act —*Notes on Clauses.*

CHAPTER IV.

Regulations

29 (1) Subject to the control of the Governor General in Council, the Local Government may make regulations for the purpose of carrying into effect the provisions of this Act

Power to make regulations

(2) In particular and without prejudice to the generality of the foregoing power, such regulation may provide for all or any of the following matters, namely —

(*a*) the manner in which Trade Unions and the rules of Trade Unions shall be registered and the fees payable on registration ,

[illegible] ed Trade Union [illegible] is by whom, the [illegible] Unions shall be audited ,

(*d*) the conditions subject to which inspection of documents kept by Registrars shall be allowed and the fees which shall be chargeable in respect of such inspections , and

(*e*) any matter which is to be or may be prescribed

Notes—In the draft Bill previously published, the rule making power vested with the Government of India It is preferable that the necessary power should be delegated to Local Government —*Notes on Clauses*

30 (1) The power to make regulations conferred by section 29 *is subject* to the condition of the regulations being made after previous publication

Publication of regulations

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897,* *as that after* which a draft of regulations proposed to be made will be taken into consideration shall not be less than three *months from the date on* which the draft of the proposed regulations was published for general information

(3) Regulations so made shall be published in the *local official* Gazette, and on such publication shall have effect as if enacted in this Act

CHAPTER V

Penalties and Procedure

31. (1) If default is made on the part of any registered Trade Union in giving any notice or sending any statement or other document as required by or under any provision of this Act, every officer or other person bound by the rules of the Trade Union *to give or send the* same, or, if there is no such officer or person, every member of the *executive* of the Trade Union, shall be punishable with fine which may extend to five *rupees and,* in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues

Failure to submit returns

* X of 1897

Provided that the aggregate fine shall not exceed fifty rupees

(2) any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 18, or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees

Notes—By this section and the next the necessary penalties have been provided for breaches of the provisions of the the law section —*Notes on Clauses* As to who may be an informer where no person is specified, *vide Cole* v *Coulton*, (1860) 2 E & E 695 The Union may be sued for such penalties by its registered name *Taff Vale Railway* v *Amalgamated Society of Railway Servants*, (1901) A C 426

Supplying false information regarding Trade Union

32 Any person who with intent to deceive gives to any member of a registered Trade Union or to any person intending or applying to become a member of such Trade Union any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same which he knows, or has reason to believe is not a correct copy of such rules or alterations as are for the time being in force, or any person who with the like intent, gives a copy of any rules of an unregistered Trade Union to any person on the pretence that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees

Notes—Section 18 of the Trade Union Act, 1871 (35 and 35 Vict, c 31) runs as follows —"It is a mean misdemeanour to give with intent to mislead or defraud, to any member or intending member of a registered Trade Union a copy of any rules or alterations or amendments of rules other than those in existence for the time being on the pretence that the same are the existing rules or that there are no other rules, or, with such intent to give a copy of any rules to any person on the pretence that they are the rules of a Union registered which is not registered

Cognizance of offence

33 (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act

(2) No Court shall take cognizance of any offence under this Act unless complaint thereof has been made by, or with the previous sanction of, the Registrar or, in the case of an offence under section 32, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed

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THE TRANSFER OF PROPERTY ACT, 1882

ACT NO. IV OF 1882

[RECEIVED THE G G's ASSENT ON THE 17TH FEBRUARY, 1882]

An Act to amend the law relating to the Transfer of Property by Act of Parties

Preamble

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties, It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

Short title

1 This Act may be called "The Transfer of Property Act 1882"

Commencement

It shall come into force on the first day of July, 1882

Extent

It extends in the first instance to the whole of British India except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant Governor of the Punjab and the Chief Commissioner of British Burma

... by notifica... eof* to the

"And any Local Government may,† from time to time, by notification in the local official Gazette, exempt either retrospectively or prospectively, any part of the territories administered by such local Government from all or any of the following provisions namely :—

"Sections 54, paragraphs 2 and 3, 59, 107 and 123."‡

"Nothwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107, and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1908§ under the power conferred by the first section of that Act or otherwise "‖

Scope of the Act—"This Act is, so far as it deals with immovable property and debts, only a partial measure We have made the preamble run this —' whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties" Compare the preamble to the Indian Contract Act *IX of 1872 which runs thus —' whereas it is expedient to define and amend certain* parts of the law relating to contracts' In section 2 we have expressly saved all transfers by operation of law (e g ... ecution ... *Select* ... of the ... relating ... C 491 (505), 28 C L J 77=47 ... of Property Act does not profess to be a complete Code 5 C L J 192=34 C 223, 83 Ind Cas 23, 1928 Cal 990 There are many mortgages known to English Law which it would be difficult or impossible to bring within the terms of the Transfer of Property Act, yet there can be no doubt that such mortgages would be enforceable in India L R 9 Ch 79, 2 Pat L J 293

Transfer of Property by Act of Parties—This Act deals with transfer of property *inter vivos* by act of parties *Mr Justice Pigot* and *Mr Justice Banerjee* observed in 20 C 273 (276) "We take it to be clear law in India as in England that a general restriction on an assignment does not apply to an assignment by operation of law taking effect *invitum* as a sale under an execution" It applies only to alienation *inter vivos* and has no application to disposal of property by Will 43 M L J 486

Transfer of property by operation of law—*Vide* notes under section 2 *infra*

Preamble—This Act was brought upon the Indian Statute Book because, according to the preamble it was expedient to define and amend certain parts of the law relating to the transfer of property by acts of parties 16 A 296

Extent—It extends to the whole of British India except the territories respec... the Lieutenant Governor ... as then constituted It ... ovince *Vide* Act VII

Punjab—Although the Transfer of Property Act is not in force in the Punjab the Punjab Courts when deciding cases in which principles of law dealt with by the

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* Inserted by Act VI of 1904, s 2

† Certain words after this repealed by Act 38 of 1920 have been omitted

‡ ... the Transfer of Property Act (1882)

Provided that the aggregate fine shall not exceed fifty rupees

(2) any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 18, or in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees

Notes—By this section and the next the necessary penalties have been provided for breaches of the provisions of the the law section—*Notes on Clauses* As to who may be an informer where no person is specified, *vide Cole* v *Coulton* (1860) 2 E & E 695 The Union may be sued for such penalties by its registered name *Taff Vale Railway* v *Amalgamated Society of Railway Servants* (1901) A C 426

Supplying false information regarding Trade Union

32 Any person who with intent to deceive, gives to any member of a registered Trade Union or to any person intending or applying to become a member of such Trade Union any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same which he knows, or has reason to believe is not a correct copy of such rules or alterations as are for the time being in force, or any person who with the like intent, gives a copy of any rules of an unregistered Trade Union to any person on the pretence that such rules are the rules of a registered Trade Union, shall be punishable with fine which may extend to two hundred rupees

Notes—Section 18 of the Trade Union Act, 1871 (35 and 35 Vict, c 31) runs as follows —"It is a mean misdemeanour to give with intent to mislead or defraud, to any member or intending member of a registered Trade Union a copy of any rules or alterations or amendments of rules other than those in existence for the time being on the pretence that the same are the existing rules or that there are no other rules, or, with such intent to give a copy of any rules to any person on the pretence that they are the rules of a Union registered which is not registered"

Cognizance of offence

33 (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act

... offence under this Act, unless c... previous sanction of, the Re... g... 32, by the person to whom the copy was given within six months of the date on which the offence is alleged to have been committed

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CHAPTER I

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It shall come into force on the first day of July, 1882

Clause (a)—The provisions of any enactment not expressly repealed by this Act are in force All local laws regulating the relations of landlord and tenant are unaffected by this Act Various other Acts dealing with subject matter provided in this Act are also unaffected See also 8 A 402=A W N 1886 139

Clause (b)—The *damdupat* rule is inapplicable to cases of mortgage governed by this Act 26 M, 662 This Act did not save a *bai bil wafa* mortgage executed before the Act A W N 1884, 269, but see 2 C P L R 130

Clause (c)—The Transfer of Property Act had no retrospective effect 19 M 382=6 M L J 88 Where a legal relation was constituted, before the Transfer of Property Act came into force, this Act has no application 10 C L J 110, 7 C L J 553 The formalities of this Act were held not to apply to mortgage bond ... C 227 Where contract has been ... eration this Act does not affect the ... W N 527=34 C 358, see also 12 ... is Act came into force, a transfer of ... manner not prescribed by the Act

Matters of substantive right as well as matters of procedure—It is a genaral rule in construing a statute that in matters of substantive right they are not to be so read as to take away ... they are general in their operation ... be beyond reasonable doubt concluded ... this settled principle of legislation ... the mode or procedure for obtaining su... change of procedure 12 C 583 (F B), ... (F B), 15 C 376 See also the Full Court decision of the Calcutta High Court reported in 22 C 767 where *Mr Justice Banerji* in delivering the judgment observed Ordinarily, no doubt, a new law should affect only future transactions and not past ones *Urquhart* v *Urquhart*, (1 Macq H L C 662) But the rule against ...

character of past transactions that the rule in question operates Every statute as has been said which takes away or impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions or considerations already passed, must be presumed, out of respect to the legislature, to be intended not to have a retrospective operation (2nd edition, p 257) [See also *Wilberforce on Statute Law*, page 157, *Sedgwick on Statutory Law*, *2nd edition*, *160*] So far as this ... applies to mortgages executed ... 432, 25 B 101, 10 M, ... 7, 26 C 29 P C ... made after the Act ... before the commencement ... Regulation XVII of 1806 ... to extend by mutual agree... ad under the ... ee acquired an ... right to have a decree declaring the property to be his absolute ... right so acquired by the mortgage while the Regulation was in force ... right which falls within the meaning of this clause 14 C 451 Even ... year of grace had not expired when the Act came into force and the ... complete right of the mortgagee had not accrued, he had acquired the ... bring a suit under the provisions of Reg XVII of 1806 at the expiration ... of grace 14 C 509, 15 C 357 But see *contra*, 6 A 262=1848 A W ... 11 C 582 The right of a decree holder obtaining a decree before ... of the Act is saved by this clause but s 99 of the Act was held not to ... a decree 12 C 439, 19 M 382=6 M L J 88 A W N 1884, 274 ... By this clause s 36 of the Act does not apply to execution sale ...

There is nothing in the clause (c) to disentitle the parties from seeking the relief given by the Act It is a provision intended to preserve existing rights and is not a disabling provision That section appears to have been intended to preserve the earlier remedies if the parties choose to avail themselves of them and not to take away the remedy given under the Act 30 M L J 338=34 Ind Cas 475

Clause (d)—This clause exempts transfers in execution of a decree from the operation of Chapter III of the Act Therefore a transfer by sale in execution of a decree need not be made by a registered instrument 2 C P L R 137, see also 28 C 714 and 33 C 786

Effect of Amendment by Act XX of 1929—Section 2, which is a saving clause, does not provide that Chapter II shall not apply to Hindus, Muhammadans or Buddhists It merely saves any rule of Hindu, Muhammadan or Buddhist *law which is not consistent with its provisions* The chapter contains general rules regarding transfers It is obvious that sections 5 to 10 contain rules which are of general application and do not in any away contravene any rule or principle peculiar to the personal laws of Hindus or Buddhists So also sections 38 to 53 are not peculiar to any particular system of law and are rules of justice, equity and good conscience Sections 11 to 35 correspond to parallel provisions of the Indian Succession Act, and were introduced in the Transfer of Property Act in order to bring the rules which regulated the transfer of property between living persons into harmony with the rules affecting its devolution upon death Sections 13 and 20 relate to transfers in favour of unborn persons, and section 14 enacts a modification of the rule against perpetuity According to the strict principles of the Hindu Law, as laid down in the Privy Council decision in *Tagore v Tagore*, I A Sup 47 *transfers or bequests in favour of* unborn persons are wholly void That principle is however now modified by the Hindu Disposition of Property Act [XV of 1916 and the Hindu Transfers of Bequests (City of Madras) Act VII of 1921] So far, therefore, as the rules of Hindu
ecessary and we propose that the
also understand that the Govern
rt have no objection to the omission
section 2 We therefore, propose
mittee The amendment is not to
1929

Interpretation clause

3 In this Act, unless there is something repugnant in the subject or context,—

Immovable property

"Immovable property" does not include standing timber growing crops or grass;

"instrument"

"instrument" means a non testamentary instrument,

"attested" in relation to an instrument, means "and shall be deemed always to have meant"* attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant, but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary "†

"registered"

"registered" means registered in British India under the law ‡ for the time being in force regulating the registration of documents,

"attached to the earth"

"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs,
(*b*) imbedded in the earth, as in the case of walls or buildings, or

* Inserted by Act X of 1927 † Inserted by Act 27 of 1926.
‡ *Vide* Act XVI of 1908

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached ,

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property, or by hypothecation or pledge of immovable property, or to any beneficial interest in movable property, not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as

actionable claim

[illegible] such debt or beneficial interest be existant, [illegible] ,"*

[illegible] of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it

Explanation I—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, [where the property is not all situated in one sub district, or where the registered instrument has been registered under sub section 2 of section 30 of the Indian Registration Act, 1908 from the earliest date on which any memorandum of such registered instrument has been filed by any Sub Registrar within whose sub district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated]†

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder,

(2) the instrument [or memorandum]‡ has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act

Explanation II—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III—A person shall be deemed to have had notice of any [illegible] whilst acting on his behalf in the course

[illegible] y conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud '§

[illegible] fined in this Act According to General [illegible] land, benefits to arise out of land, and things [illegible] it Act An interest in Royalty is not an in er- [illegible] as 673 Whether machinery is immovable [illegible]

Immovable property comprehends all that would be real property according to English law and possibly more—13 B L R 234 (P C)

Standing timber—Growing trees are immovable property 10 A L J 516; see also 13 Bom L R 874 , 9 Ind Cas 478 , 81 Ind Cas 650

Growing crops—are movable property 13 C 262 , 13 A 133 , 32 C 66 , 16 M 429

Notice—The definition of the word "notice' in this section correctly co[illegible]

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* Inserted by Act (II of 1900) s 2

† Substituted by Act V of 1930

‡ Added by Act V of 1930

§ Substituted by Act XX of 193[illegible]

the law as to notice which existed prior to the passing of the Act 9 A 591 Whenever a party has obtained a full knowledge although not in accordance with the rules which define the nature of notice and regulate the mode of its being given and received, there is no longer any need of invoking the legal conception of notice, the rules concerning it no longer apply, the very fact for which it is intended as substitute has been more accurately accomplished in another manner If the party has in any way obtained the full knowledge, those same results must necessarily and even in a higher degree, be attributed to it—the very substance itself—which are from motives of general policy attributed to notice as its representatives and substitutes 34 C L J 256=26 C W N 36

Two kinds of notice—(1) Express, and (2) constructive

Express notice—when the party actually knows the fact

Construct [illegible]

a pr- [illegible]
ledg [illegible]
this section notice is presumed from (1) wilful abstention, (2) gross negligence and (3) agent's knowledge This doctrine of constructive notice is applied to transactions relating to land and has not been extended to commercial relations—*Manchester Trust* v *Furness* (1895) 2 Q B 539

Explanation I—Notice as defined in section 3, includes both actual and constructive notice There is a conflict of decisions whether the registration of a document under the Indian Registration Act is of itself constructive notice of the transaction effected by the document The High Courts of Bombay and Allahabad held that it is 6 B 158, 9 B 427, 26 B 538, 45 B 170=59 Ind Cas 506, 16 A 478, 9 A L J 759=16 Ind Cas. 102 The Madras High Court held that registration does [illegible] I 268, 13 M 383, *see also* 89 *Ind Cas* 625=A I [illegible] In some cases the Calcutta High Court took the [illegible] Court 23 C 790, 27 C 7; 27 C 358, 34 Ind Cas [illegible] N 750, *Sir Lawrence Jenkins* says—"Apart from having regard to the statutes applicable in this country that the proposition involved is not one of law but of fact, and that as each case arises it should be determined whether in that individual case the omission to search a register, taken together with other facts amounts to such gross negligence as to attract the consequence which results from notice, and it will be that this test will serve to reconcile the apparent conflict of view that at first sight the cases suggest" Following that decision in 7 C W N 11, the same High Court held as follows "Whether registration is or is not notice in itself depends we think, upon the facts and circumstances of each case upon the degree of care and caution which an ordinary prudent man would necessarily take for the protection of his own interest by search into the register kept under the Registration Act" See also 84 Ind Cas 1174, A I R 1925 Lah 25, 59 Ind Cas 506=45 B 170, 4 L L J 23=A I R 1922 Lah 64, 39 Ind Cas 778, 4 P R 1915; 1 Pat L R 80, A I R 1924 P 359 The question was considered by the Judicial Committee in *Tilak Lal* v *Khedan Lal* 47 I A 239=48 C 1 After reviewing all the Indian decisions, their Lordships of the Privy Council approved of the view taken in the Calcutta cases in 2 C W N 750 and 7 C W N 11 and observed:—"Their Lordships are impressed with the view that since registration has for nearly two centuries been held not to operate as construc- [illegible] law which was then old must [illegible] ey framed the different Indian [illegible] *Transfer of Property Act*, yet [illegible] e on which according to the appellant's contention it is essential that the register should provide For these reasons their Lordships think that notice cannot in all cases be imputed from the mere [illegible] of deeds" [illegible] Privy Council would [illegible] njury and litigation [illegible] rt in *Tulsidhari's* case the Judicial Committee also observe that the real purpose of registration is to secure that every person dealing with property, when such dealings require registration may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which his title may be

affected unless indeed he has actual notice of some unregistered transaction which may be valid apart from registration In America registration of a conveyance has been deemed to operate as constructive notice to all subsequent purchasers of any estate legal or equitable in the same property The reason assigned for the application of this doctrine is as follows —

"The reasoning upon which this doctrine is founded is the obvious policy of the Registration Acts, the duty of the party purchasing under such circumstances to search for prior encumbrances the means of which search are within his power, and the danger of letting in parol proof of notice or want of notice of the actual existence of the conveyance This doctrine certainly has the advantage of certainty and universality of application, and it imposes upon subsequent purchasers a reasonable degree of diligence only in examining the titles to estates —*Story on Equity Jurisprudence*, Art 534 pp 510 511

In England also in the countries of Middlesex and Yorkshire, where the system of local deeds registeries prevails section 197 of the Property Act 1925 provides that registration in a local deed Registery of a memorial of any instrument transferring or creating a legal estate or charge shall be deemed to constitute actual notice of the transfer or the creation of the legal estate or charge to all persons and for all purposes whatsoever as from the date of registration and so long as the registration continues in force So also under section 198 the case of instruments which

s been provided that the regis

such instrument to all persons

he system of registration has been generally applied if registration is to be held as not implying notice one of the objects for which instruments are required to be registered would be defeated Moreover as will be seen below one of the important changes suggested by us is compulsory registration It is therefore necessary that express provision should be made in the Act making it clear that registration of an instrument relating to immovable property amounts to notice of the instrument from the date of the registration For this purpose we propose to add Explanation I to the definition of 'Notice in section 3 —*Report of the Special Committee*

Or if the instrument etc —In regard to *Explanation* I which it is proposed to add to the definition of notice in section 3 of the Transfer of Property Act 1882, (in this Report referred to as the principal Act), it has been pointed out that the provision that the registration of a document amounts to notice from the date on which it is registered, will cause difficulties in a case in which the document has not been registered at the place where the property is situate This objection has some force We have, therefore, added at the end of *Explanation I*, the following words Or if the instrument 66 of that Act —*Report of the Select Committee*

Effect of Amendment by Act V of 1930—The formal amendments in

of Explanation I contained in sec-

29 The difficulties sought to be met

on are not confined to cases where

section 30 of the Indian Registration

an instrument relating to scattered

properties is registered in the ordinary manner Further, it is possible, under the present explanation, that a subsequent transfer may make a genuine search in the offices of all the sub districts in which the property he seeks to acquire is situated and finds no record of a transfer but may still find himself saddled with notice of a transfer by reason of a memorandum relating to some other property, included in a previous transfer along with the property he is interested in, having been filed in some distant sub district —*Statement of Objects and Reasons* This amendment is not to have any retrospective effect *vide* s 63 of Act XX of 1929

Explanation I—It is not clear how far possession is to be regarded as notice In some cases it has been held that possession amounts to such notice of title as the person in possession may have 25 A 366, 16 M 148, 16 Ind Cas 811=17 C L J 109, 3 Lah L J 447, 2 Lah L J 720, 41 Ind Cas 628, 33 Ind Cas 121, but see 45 M L J 275=A I R 1924 Mad 67 In other cases, Courts have felt difficulty in expressing any opinion on the point 8 C 597 Possession which operates as notice, however, must be actual possession 27 B 43 As regards whether constructive possession is notice *vide*, 7 C W N 294 "It does not seem reasonable that a person entering into a transaction regarding immovable

property should be in a position to ignore the question of possession or should neglect to inquire into the nature of the possession or the title of the person who is in actual possession of such property, if he is not the person with whom he is dealing. We propose to add Explanation II to the definition of 'notice' proving that the person dealing with any immovable property shall be deemed to have notice of the title of any person who for the time being is in actual possession thereof. It may be noted that notice in this case is not extended to possession which is merely of a constructive nature. The explanation is in accordance with illustration 3 to section 27 (b) of the Specific Relief Act."—*Report of the Special Committee*.

Explanation II.—"The last portion of the existing definition of notice which relates to notice through an agent seems to us to be defective. It provides that a person has notice of the fact when information of the fact is given to or obtained by his agent under the circumstances mentioned in section 229 of the Indian Contract Act. The words given to or obtained by his agent used in the definition suggest that the rule is restricted to facts of which the agent has actual knowledge, or, in other words, express notice (*vide* observations of *Pontifix J* in I. L. R. 4 Cal. 897). The reference to section 229 of the Indian Contract Act does not extend the scope of the definition. That section merely provides that in order that notice to an agent [illegible]

[illegible] Harpal Singh v. Balbadhar Singh, 29 I. A. 203=25 A. 1, it is not a mere question of constructive notice or inference of fact but a rule of law which imputes the knowledge of the agents to the principal or (in other words) the agency extends to receiving notice on behalf of his principal of whatever is material to be stated in the course of the proceedings. In *Mohori Bibee* v. *Dhuramdas Ghose*, (30 I. A. 114) their Lordships of the Privy Council held that although the principal was absent in Calcutta and personally did not take part in the transaction his agent in Calcutta stood in his place for the purposes of the transaction, and the acts and knowledge of the latter were the acts and knowledge of the principal. If notice to the agent, whether actual or constructive is not made notice to the principal it has been said that notice would be avoided in every case by employing agents. *Berwick and Co* v. *Price*, (1905) 1 Ch. 632. [illegible] knowledge of the prin[illegible] [illegible]he matter for which [illegible] It is necessary that [illegible]usiness for which he [illegible] embodied in section [illegible] to add Explanation [illegible] [illegible]gent whilst acting in the course of business is notice to his principal has been properly criticised as being too general and vague. We have added provisions to the effect that the notice must be of a fact which is material to the course of the business in which the agent is engaged, and that the agent must not fraudulently have concealed the fact from his principal."—*Report of the Select Committee*.

Possession.—Possession is sufficient to put a person to inquiry. 16 C. 414, 9 M. I. A. 18, 11 M. 416, 14 A. 362, 27 A. 366. 8 B. 182, 7 B. 145, 6 B. 193 (F. B.), 6 B. 168 (F. B.), 22 W. R. 8. 22 W. R. 189. 6 B. H. C. O. C. 59, 17 W. R. 151, 19 B. 391, 21 C. 116. The possession must be actual. 7 C. W. N. 284. *Vide* also 43 Ind. Cas. 559. 45 Ind. Cas. 49.

Enactments relating to contracts to be taken as part of Contract Act.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

[illegible] nd 107 and 123 shall be read [illegible] "1908."*

[illegible] s. 107 has to be construed as [illegible] lease of movable property does [illegible]

* Substituted by Act XX of 1929.

CHAPTER II

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

(A) *Transfer of Property, whether movable or immovable*

5 In the following sections "transfer of property" means an act by which a living person conveys property in present or in future, to one or more other living persons, or to himself"* and one or more other living persons, and "to transfer property" is to perform such act

Transfer of property' defined

"In this section, 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals"*

Transfer of property—The term Transfer of Property Act is a general one and is not confined to transfer of a contractual and literal character Besides including a conveyance and assignment of a contractual character, it appears from the definition of "transfer of property" given in s 5, to include the exercise of a power of appointment under a settlement 22 C 185 This definition does not apply transfer contemplated by Presidency Towns Insolvency Act 24 Bom L R 861

Chapter II Sub head A—Covering ss 5 to 37 applies to property whether movable or immovable Therefore, where a reversioner transferred his interest in certain promissory notes to a female, who had at the time of transfer a life estate in the notes, *Held* that the transfer was invalid.—4 Ind Cas 144=7 A L J 11

Object of Amendment by Act XX of 1929—"We have amended section 5 to make it clear that a transfer can be made by a person to himself as for instance by a person making a settlement or trust in which he constitutes himself a trustee An *Explanation* had been added to the section to make it clear that the words 'living person' include corporations and other associations of persons"—*Report of the Select Committee*

6 Property of any kind may be transferred, except as otherwise provided by this Act, or by any other law for the time being in force

What may be transferred

(*a*) The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred

(*b*) A mere right of re entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby

(*c*) An easement cannot be transferred apart from the dominant heritage

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him

"(*dd*) A right to future maintenance in whatsoever manner arising, secured or determined, cannot be transferred"*

(*e*) A mere right to sue † cannot be transferred

(*f*) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable

(*g*) Stipends allowed to military "naval" ‡ "air force" † and civil pensioners of Government and political pensions cannot be transferred

(*h*) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) *for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act*, 1872, § or (3) to a person legally disqualified to be transferee

(*i*) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of

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* Added by Act XX of 1929

† In cl (e) certain words repealed by Act (II of 1900), have ben omitted

‡ Inserted by Act 35 of 1934

§ Added by Act (III of 1885) s 4

which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee *

Clause (*a*)—It was not intended by this clause to establish and perpetuate the distinction between that which according to the phraseology of English lawyers is assignable in law and that which is assignable in equity The exception in cl (*a*) cannot be by reason of the future character of the chance, it mus be because it was thought undesirable that it should be capable of transfer 31 B 165=8 Bom L R 781 Right of a reversionary heir cannot be transferred 29 M 120, 10 O C 277, A W. N 1908, 248, 29 C 355; 13 Ind Cas 995=15 O C 122, 32 A 188=7 A. L J 11=4 Ind Cas 144; 11 O C 301; 9 C L J 50=1 Ind Cas 590, 25 I A 183=21 A 71; 31 B 167, 11 A 456, 39 M 354, 8 W R 253; 22 B 985; 7 B L. R 345, 30 M 255, 24 Bom L R 351, 48 C 1059, 65 Ind Cas 27, 25 C W N 496, 2 Pat. L J 471; 62 Ind Cas 932; 3 Lah L J 211 The clause has no application to the case of a member of a joint Hindu family whose interest in the ancestral property is not in the nature of a mere *spes successiones* 49 Ind. Cas 907; see also 37 M. L J 402 Vested right is transferable 48 Ind Cas 326.

Clause (*d*)—A right to future maintenance is not an interest in property res ... ...y, within the meaning of paragraph ... 108=20 M L J 785 The sale of ... 4 A L J 712=A W N 1907, 282 ... is inalienable 1 C W. N 493=24 ... B L R 727, 51 Ind Cas 86 The ... 1 M W N. 1910, 233 *Dasagir hak* ... An annuity by way of maintenance is ... 824

Clause (*dd*)—Section 6 which enumerates property of different kinds which cannot be transferred include in clause (d) an interest in property restricted in his enjoyment to the owner personally. A right to receive maintenance is a personal right, although any particular property or the income thereof may be charged with it. It is in accordance with public policy that these rights which are generally created ... ment of a ... owner *e g* a Hindu female ... cases it has ... by a decree ... decree would ... nal benefit of ... Code of Civil ... urt does not make any exception in the case of maintenance fixed by agreement or decree The above reasoning, however, does not apply to arrears of maintenance which have accrued due —*Report of the Special Committee*

C... mere right to ... laim is ... L J ... The ... credit ... 486 A claim for unascertained damages for breach of contract is not assignable as it is a ...

right to sue 28 C W N 694 A right of re conveyance is ... N 519 Right to past mesne profits is assignable. 69 Ind Cas 693; 47 Ind Cas

* Added by Act X of 1929

151, 35 M L J 410 Right to recover debt is not transferable 17 A L J 837 But see 47 Ind Cas 634 A contract for service is not assignable 47 Ind Cas 902

Clause (h) —It is the sense of the community as a whole that decides whether a certain purpose is immoral, the fact that in certain section of the community concubinage is allowed and is not regarded as immoral does not make a settlement by a member of such community ir
ral 44 M 329=28 M L T 255
who has transferred a property to
get it annulled if the intended purp
L T 255, 1924 Mad 140

7 Every person competent to contract, and entitled to transferable property or authorized to dispose of transferable property not his own, is competent to transfer such property, either wholly or in part, and either absolutely or conditionally, in the circumstances to the extent and in the manner allowed and prescribed by any law for the time being in force

Persons competent to transfer

Persons competent to contract —*Vide* s 11 of the Contract Act.

Contract by minor —is void 30 I A 114=30 C 530 26 A 342, 33 M 312, 10 Ind Cas 903, 39 I A 1=39 C 232

Aliens —An alien enemy is incompetent to contract *Le Bret* v *Papplen*, 4 East 505; *Janson* v *Driefontein Co* (190) App Cas 486, 493, 499

8 Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof

Operation of transfer

Such incidents include, where the property is land, the easements annexed thereto the rents and profits thereof accruing after the transfer, and all things attached to the earth,

and where the property is machinery attached to the earth, the moveable parts thereof,

and, where the property is a house, the easements annexed thereto the rent thereof accruing after the transfer, and the locks, keys, bars doors, windows and all other things provided for permanent use therewith

and, where the property is a debt or other actionable claim the securities therefor [except where they are also for other debts or claims not transferred to the transferee], but not arrears of interest, accrued before the transfer,

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect

Notes —Under this section the transfer of a debt passes to the transferee the securities for the debt 18 M 454=5 M L J 92

The word 'debt in clause (e) has not been used in its widest sense 30 M 235=17 M L J 87

The transfer of immovable property does not pass to the transferee the income which accrued before the date of transfer 58 Ind Cas 383 see also 57 Ind Cas 158

This section merely gives statutory effect to an ordinary rule governing all transfers of property independently of the Act 12 Bur L T 133

Where a transferable grant in perpetuity has been made in favour of one person who has transferred the same to a third person, no subsequent *sanad* in favor of the transferor or any other person can legally be issued so as to constitute a fresh grant unless the transfer can be avoided 48 Ind Cas 900 A covenant for renewal in a lease passes with the leasehold 51 Ind Cas 360 With the transfer of a promissory note the equitable mortgage created by the note also passes to the transferee 26 M L T 242

Where immovable property is hypothecated the fixtures pass to the mortgagee 22 C W N 758=44 Ind Cas 211

9 A transfer of property may be made without writing in every case in which a writing is not expressly required by law

Oral transfer

Notes—Writing is not essential in case of surrender of tenancy 13 L W 230=61 Ind Cas 852, 28 C L J 220, 22 C W N 442 Oral transfer of right to enjoy usufruct is valid 49 Ind Cas 406.

Condition restraining alienation

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with, or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein

Scope—This section merely excepts from the general rule laid down in the section, the particular case of married woman does not give a restraint upon anticipation any greater force than it had before the passing of the Act, it merely preserves to it the effect it previously had, leaving the Married Woman's Property Act of 1874 and the decisions upon it untouched 12 C 522 A condition against alienation in a compromise decree is void 3 A L J 621=A W. N 1906, 214 So also such a condition in a sale deed is void 8 A 452=A W N 1886 189, *1924 Lah 674*, 80 Ind Cas 918, *1924* Lah 729 A restraint on an alienation qualified as to time may be valid 14 C L J 303 The word absolutely must be read with some qualification A restraint on alienation absolute in its terms but limited to last for a period of uncertain duration is invalid 25 O C 189 Sale with an agreement that vendee must not sell to any one but the vender or his heirs for a fixed price is void as the agreement in substance amounts to an absolute restraint on alienation and is unenforceable 19 A. L J 848, see also 80 Ind Cas 962 Transfer of property reserving life interest is not void 58 Ind Cas 552

Restriction repugnant to interest created

11. Where on a transfer of property, an interest therein is created absolutely *in favour of* any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction

"Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."*

Notes—This section only relates to transfer by act of parties 12 A 192

A clause for restraint upon alienation by the reversioners, in a deed of family settlement betweeen two Hindu widows and the reversionary heirs, who were two brothers of their husbands, is bad in view of the principle recognised in this section 14 C L J 303

The covenant that in the case of a transfer of a permanent, heritable and transferable tenure one fourth of the purchase money would be paid to the landlord is valid 37 C L J 303

[illegible] of which is to disable the vendor for [illegible] nterest conveyed to him, is not only [illegible] violation of the principles enunciated [illegible] 1886, 189

Object of Amendment by Act XX of 1929—"Sections 11 and 40 of the Act refer to affirmative and negative covenants in a transfer Section 11 refers to rights as between a transferor and a transferee, while section 40 relates to the rights of third parties against transferees The words 'to compel its enjoyment,' used in the second paragraph of section 40, indicate that affirmative covenants for the beneficial enjoyment of one piece of the property of which the other piece

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* Substituted by Act XX of 1929

has been transferred can in all cases be enforced This paragraph seems to have been based on the observations of *Lord Cottenham* in *Tulk* v *Moxhay* 2 P L 774 a case decided in 1848 But in later English decision, such as *Hayword* v *Burnswick Building Society*, 8 C B D 403 the observations in *Tulk's* case were not approved, and it is now settled that except in certain special cases affirmative covenants be specifically enforced Thus in *Austerbury* v *Corporation of Oldham*, (1885) 29 Ch D 750, a covenant to spend money on the land was held as not binding on the purchaser of the land although he had notice of the same Indian Courts have followed the same principle (27 Bom L R 73) We propose that the second paragraph of section 11 and the first paragraph of section 40 should be so amended as to make it clear that, although an affirmative covenant is not by itself invalid as between a transferor and a transferee (section 11), negative or restrictive covenants only can be specifically enforced against a third person (section 40)' —*Report of the Special Committee*

Condition making interest determinable on insolvency or attempted alienation

12 Where property is transferred subject to a condition or limitation, making any interest therein reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void

Nothing in this section applies to a condition in a lessee for the benefit of the lessor or those claiming under him

Notes—This section relates to transfer by act of parties 12 A 192

A gift subject to power of revocation is not invalid under this section 4 A L J 708=A W N 1907, 1278

Transfer for benefit of unborn person

13 Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property

Illustration

A transfers property, of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life and after his death for A's second son The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property

Rule against perpetuity

14 No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong

Notes—S 2 (d) of the Transfer of Property Act provides that nothing in this chapter shall be deemed to affect any rule of Hindu law 29 M 412=1 M L T 227 A contract with regard to land which is calculated to defeat the rule against perpetuities which is one of public policy is void 24 Bom L R 449=1922 (Bom) 84, see also 26 C W N 874=67 Ind Cas 719 A covenant for pre emption unlimited in point of time is void as offending the rule against perpetuities Therefore an agreement among the members of a family that in case one of them had to sell his portion of the family property he would offer it for sale in the first instance to the other members cannot be specifically enforced 64 Ind Cas 100, 25 C W N 905, but see 22 A L J 265, 82 Ind Cas 326

A covenant entered into by the owner of a hill, by which he agreed to give the appellant lands for building purposes whenever required free of cost is not covenant running with the land and could not be so enforced against the assignees from the owner 48 I A 376 P C

15 If, on a transfer of property, an interest therein is created for the benefit of a class of persons, with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails "in regard to those persons only and not in regard to the whole class."*

Transfer to a class, some of whom come under sections 13 and 14

Scope of section 15—Section 15 of the Transfer of Property Act deals with gift to a class It reproduces with slight alternations the provisions of section 102 of the Indian Succession Act, 1865 (now section 115 of the Indian Succession Act, 1925), which was enacted on the principle of the decision in *Leake v. Robinson* (1817) 2 Mer 363 The reason of the rule is thus stated by *Sir. W Grant M R* 'The bequests *in question are not made to individuals*, but to classes: and what I have to determine is whether the classes can take I must make a new Will for the testator, if I split into portions his general bequest of the class, and say that because the rule of law forbids his intention from operating in favour of the whole class, I will make his bequests what he never intended them to be, *viz* a series of particular legacies to particular individuals; or, what he has as little in his contemplation, distinct bequest, in each instance, to different classes, namely, to grand-children living at his death, and to grand-children born after his death" The doctrine of *Leake* v *Robinson*, was discussed in *Hale* v *Hale*, 3 Ch D 643 and *Pearks* v *Mosely* 5 App Cas 714 In the latter case *Lord Selborne* said. "The rule is that the voice of remoteness affects the class as a whole if it may affect an ascertained number of its members." See also *Dungannon* v *Smith*, 12 Cl & D 575 So "whe ... be ascertained beyc ... living person who ... h offend the rule ... 1865, enacts that ... whom it is inop ... here a limited interest is given to an unborn person, or (2) by reason of the rule contained in section 101 being the rule against perpetuity such bequest shall be wholly void

Prior to certain special Acts, to be presently noted, Hindu Law did not permit a gift in favour of a person who was not in existence at the date of the gift or a bequest *in favour of a person who was not in existence* at the death of the testator (*Tagore* v *Tagore*, 1872, 9 B L R 377 400=I A Sup vol 47), on the ground that a person capable of taking must be in existence at the material date Difficulties, however, arose where a gift was made ... and some were not in existence at the date ... subject is that of *Rai Bishen Chand* v *M* ... 164=6 A 560, wherein a Hindu made a gift ... was then in existence and his (S's) brothers who may be born thereafter It was ... *Leake* v *Robinson* and the analogy of section ...

... eld that *the rule that* where a ... wholly void, is not true in all cases ... in sections 100 and 101 of the ... was observed that it did not apply ... grandson did not fail by reason of the rules contained in section 100 or section 101, but by reason of the personal ... se *of the judgment* their ... ion 102 imports into India ... intention of the testator" ... ed that it is not necessary ... by rules of construction drawn from English Law and applicable to English deeds of gift" So the rule laid down in *Leake v Robinson*, and followed in the case of Hindu Wills in several earlier cases (*vide* 8 B L R 400, 2 C 212, 4 C 455=2 C L R 315, 5 C L R

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* Substituted by Act XX of 1929 This amendment has got no retrospective operation.

496, 8 B L R 564), was held inapplicable in the case of Hindu Wills as the gift did not fail by virtue of ss 100 and 101 of the Succession Act 1865 The case of *Rai Bishen Chand* v *Asmaida Koer*, was followed in a large number of subsequent Indian cases

The true scope of the rule in *Leake* v *Robinson*, was pointed out by *Sir Lawrence Jenkins* in *Radha Prasad* v *Ranimoni Dasi*, (1911) 38 C 188 affirmed in 41 I A 176 Dealing with that rule the learned Judge said at page 109: "On behalf of *Ranimoni* it is contended that as some of the class cannot take, the whole gift is void and in ... eeds on ... class ... not be ... the gift ... cludes some who were not in existence at the date of the testator's death and were thus under a personal incapacity And the difference is obvious In a gift to a class the testator looks to the body as a whole rather than to the members constituting that body [*Kingbury* v *Waller*, (1901) A C 187, 191] and the class is in a sense personified But if that class cannot be ascertained until a time beyond that per ... legally ... l within ... capable

... ength by ... case the ... roducing ... that the rule was introduced into India owing to a mistaken analogy and observed as follows —

'It is no new doctrine that rules established in English Courts for construing English documents are not as such applicable to transactions between natives of this country Rules of construction are rules designed to assist in ascertaining intention and the applicability of many of such rules depends upon the habits of thought and modes of expression prevalent amongst those to whose language they are applied English rules of construction have grown up side by side with a very special law of property and a very artificial system of conveyancing and the success of those rules in giving effect to the real intention of those whose language they used to interpret, ... that ... f the ... rious ... most ... point, think differently, and speak differently from Englishmen, and who never heard of the rules in question

'The words were used in England,—a country in which the nearest relations are separate in property, in residence, and in all the details of life, one brother is no more affected by a gift to another brother than by a gift to a stranger and there is all the difference in the world between a gift to all the members of a class and to some of them But with the Hindus the joint family state is a normal state, separate property is the exception Even when individual members of a family have separate property, they may and generally do continue to live together joint in food and wor- ... so ordinarily in ... depend ...

and testator contemplates as existing and desire such a family communities the language of *Sir* ... mparatively ... maller num- ... such as to ... gland" ... "prepared ... om are or may be incapacitated from taking because not born at the date of gift or the death of ... gift, it ... taking ... uncil in

Bhagabati v Kali Charan (1921) 38 I A 54, at some length and their Lordships expressed their entire concurrence in the judgment "

Blackburn sufficiently indicated their inclination against the rule, which, however, was settled in England by a long series of cases and could not be disturbed except by legislation

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to the effect that a gift *inter vivos*, or a bequest to a class of persons some of whom are incapable of taking by reason of the peculiar rule of Hindu law that the gift is valid only if it is made to a sentient being capable of taking is void also as regards
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unity so the interpretation
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"*16 Where, by reason of any of the rules contained in section 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails "

Transfer to take effect on failure of prior interest

"*17. (1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

Direction for accumulation

(*a*) the life of the transferor, or

(*b*) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer

* Ss 16 to 18 have been substituted for the original by Act XX of 1929 This amendment has no retrospective operation, *vide* Act XX of 1929 s 63

of the aforesaid periods, and at the end of such last mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(iii) the preservation or maintenance of the property transferred; and such direction may be made accordingly"

"*18 The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health safety, or any other object beneficial to mankind"

Transfer in perpetuity for benefit of public

Section 16—As section 15 of the Act when amended as above will no longer

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of the Special
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Section 17—The restrictions contained in sections 14 and 16 and also the res-
charities, and we propose that the
immediately after section 16 and be
rities, which is now numbered 17,
accumulation has been held valid
in the case of Hindu and Muhammadan religious endowments though it infringed the rule against perpetuities 31 C 5, 23 C L J 241, 34 M 12, 24 Ind Cas 72=1 O L J 204; 17 C W N 39, 12 C L J 391, 32 C 166, 30 A 111, 4 C 443

Section 18—'Section 18 relates to the rule against accumulations and provides how long the income of any property transferred can be directed to be accumulated so as to prevent its being received and enjoyed by the transferee This section and section 117 of the Indian Succession Act allow accumulations for the period of an year only in certain cases In England the *Thelluson Act* allowed a much longer period Moreover in cartain cases, the restriction against accumulation was not applicable at all Thus that Act allowed accumulations for the payment of debts and for providing funds for children Accumulations are also allowed in English law
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* Ss 16 to 18 have been substituted for the original by Act XX of 1929 This amendment has no retrospective operation, *vide* Act XX of 1929, s 63

such direction was neither so unreasonable in its conditions as to be against public ing out an illegal object, the direction) In a case quoted in a foot note in I L nkins C J after reviewing English and "A direction to accumulate with a gift of the accumulation is not fundamentally bad it only fails if it offends some independent rule of Hindu Law. Or the direction to accumulate may be repugnant and so t which has become within the power of here would seem to who under the same gift may become entitled to original corpus of the testator s property What then is the period during which an accumulation can be directed? On principle I think it must be for so long a time as the absolute vesting of the entire interest can be withheld, or for so long a time as that during which the corpus of the property can be rendered inalienable, or its devolution can be directed and controlled by a testator certain can easi Law the held valid

It is, however, difficult to adopt the English Law contained in the Property Act, 1925, in its entirety Section 164 prescribes four periods during which accumulation can validly be directed, *viz* —

"(*a*) The life of the grantor or settlor,

"(*b*) a term of 21 years from the death of the grantor, settlor or testator,

"(*c*) the duration of the minority or respective minorities only of any person or persons living or *en ventre sa mere* at th

"(*d*) the duration of the minority or persons who under the limitations of would for the time being, if of full a accumulated

"Rules regarding accumulation are closely connected with the rule against perpetuities (*Cheshire on Modern Real Property*, p 482, *Fearne on Contingent Remainders*, p 537) The English r has not been wholly adopted in India. period is the life of any person or of th who are alive or *en ventre sa mere* at creates the interest begins to operate plus a period of 21 years from the time when such designated person dies [*Cadell* v *Palmer*, (1833) 1 C L & F 372) *The rules* as transfer *inter vivos* is concerned are contained ction 14 no transfer of property can operate to ke effect after the lifetime of one or more persons fer and the minority of some persons who shall be in existence at the expiration of that period and to whom, if he attains full age the interest created is to belong The periods in section 164 of the Property Act, 1925, cannot be incorporated in its entirety in the Transfer of Property Act without affecting the provisions of sections 13 and 14 We, therefore, consider it desirable to permit accumulations during the following periods only —

(1) the life of the transferor, or

(2) a period of 18 years thereafter

This would avoid difficulty of construction At the same time we think it desirable to accept certain well recognised exceptions in law such as those relating to provisions for the payment of debts, raising portions for children and the repairs to the property transferred Section 18 therefore should be amended accordingly" — *Report of the Select Committee*

Vested interest

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect or in terms specifying that it is to take effect forthwith, or on the happening on an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that, if a particular event shall happen, the interest shall pass to another person

When unborn person acquires vested interest on transfer for his benefit

20 Where, on a transfer of property, an interest therein is created for the benefit of a person not then living he acquires upon his birth, unless a contrary intention appears from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth

Contingent interest

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible

Exception—Where, under a transfer of property a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent

Notes [illegible] person to inherit that right 7 Bom L R [illegible] ntingent is a present

Transfer to members of a class who attain a particular age

22 Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age such interest does not vest in any member of the class who has not attained that age

Transfer contingent on happening of specified uncertain event

23 Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as the intermediate or precedent interest ceases to exist

Transfer to such of certain persons as survive at some period not specified

24 Where on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer

Illustration

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them C dies during the life of B D survives B At B's death the property passes to D

Conditional transfer

25 An interest created on a transfer of property and dependant upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of

such direction was neither so unreasonable in its conditions as to be against public policy nor given for the purpose of carrying out an illegal object, the direction
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must be for so long a time as the absolute vesting of the entire interest can be withheld, or for so long a time as that during which the corpus of the property can be rendered inalienable, or its devolution can be directed and controlled by a testator " Although these decisions show that accumulation may be directed with certain restrictions they do not lay down any rule which is definite and which Courts can easily follow It is desirable to lay down definitely on the lines of the English Law the periods and the objects for which a condition as to accumulation should be held valid

It is, however, difficult to adopt the English Law contained in the Property Act 1925, in its entirety Section 164 prescribes four periods during which accumulation can validly be directed, *viz* —

'(*a*) The life of the grantor or settlor,

'(*b*) a term of 21 years from the death of the grantor, settlor or testator,

'(*c*) the duration of the minority or respective minorities only of any person or persons living or *en ventre sa mere* at the death of the grantor, settlor or testator,

'(*d*) the duration of the minority or respective minorities only of any person or persons who under the limitations of the instrument directing the accumulation would for the time being, if of full age, be entitled to the income directed to be accumulated

'Rules regarding accumulation are closely connected with the rule against perpetuities (*Cheshire on Modern Real Property*, p 482, *Fearne on Contingent Remainders*, p 537) The English rule of perpetuities has a historical origin and has not been wholly adopted in India According to the English Law the perpetuity period is the life of any person or of the survivor of any number of persons who is or who are alive or *en ventre sa mere* at the moment when the deed or the Will which
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Palmer, (1833) 1 C L & F 372) The rules
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(1) the life of the transferor, or

(2) a period of 18 years thereafter

This would avoid difficulty of construction At the same time we think it desirable to accept certain well recognised exceptions in law such as those relating to provisions for the payment of debts, raising portions for children and the repairs to the property transferred Section 18 therefore should be amended accordingly" — *Report of the Select Committee*

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19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect or in terms specifying that it is to take effect forthwith, or on the happening on an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation —An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that, if a particular event shall happen, the interest shall pass to another person

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Contingent interest

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible

Exception – Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income, or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent

Notes —The right of a son or daughter or other heir of a person to inherit that person's property on his death is neither a vested nor contingent right 7 Bom L R 742=30 B 30 Right, title or interest whether vested or contingent is a present right and not a future right 89 P R 1908=145 P W R 1908

Transfer to members of a class who attain a particular age

22 Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age

Transfer contingent on happening of specified uncertain event

23 Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen and no time is mentioned for the occurrence of that event, the interest fails, unless such event happens before, or at the same time as the intermediate or precedent interest ceases to exist

Transfer to such of certain persons as survive at some period not specified

24 Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer

Illustration

A transfers property to B for life, and after his death to [illegible] equally to be divided between them, or to the survivor of them, C dies [illegible] life of B D survives B At B's death the property passes to D

Conditional transfer

25 An interest created on a transfer of property and [illegible] condition, fails if the [illegible] is impossible, or is forbidden [illegible]

such nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy

Illustrations

(*a*) A lets a farm to B on condition that he shall walk a hundred miles in an hour The lease is void

(*b*) A gives Rs 500 to B on condition that he shall marry A's daughter, C At the date of the transfer, C was dead The transfer is void

(*c*) A transfers Rs 500 to B on condition that she shall murder C The transfer is void

(*d*) A transfers Rs 500 to his niece C, if she will desert her husband The transfer is void

Fulfilment of condition precedent

26 Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with

Illustrations

(*a*) A transfers Rs 5,000 to B on condition that he shall marry with the consent of C, D and E E dies B marries with the consent of C and D B is deemed to have fulfilled the condition

(*b*) A transfers Rs 5,000 to B on condition that he shall marry with the consent of C D and E B marries without the consent of C, D and E, but obtains their consent after the marriage B has no fulfilled the condition

Conditional transfer to one person coupled with transfer to another on failure of prior disposition

27 Where on a transfer of property an interest therein is created in favour of one person and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in the manner

Illustrations

(*a*) A transfers Rs 500 to B on condition that he shall execute a certain lease [illegible] neglect to do so to C B dies
[illegible] es effect
[illegible] she should die in his lifetime,
[illegible] A and his wife perish together,
[illegible] to prove that she died before him
The disposition in favour of B does not take effect

Ulterior transfer conditional on happening or not happening of specified event

28 On a transfer of property, an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen, such interest shall pass to another person, or that in case a specified uncertain event shall not happen, such interest shall pass to another person In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22 23, 24, 25 and 27

Fulfilment of condition happening subsequent of ulterior fulfilled

29 An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly

Illustration

A transfers Rs 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that if B dies a minor or marries without C's consent, the said Rs 500 shall go to D B marries, when only 17 years of age without C's consent The transfer to D takes effect

Prior disposition not affected by invalidity of ulterior disposition

30 If the ulterior disposition is valid, the prior disposition is not affected by it

Illustration

A transfers a farm to B for her life and if she does not desert her husband, to C B is entitled to the farm during her life as if no condition had been inserted

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen

31 Subject to the provisions of section 12 on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen or in case a specified uncertain event shall not happen

Illustrations

(*a*) A transfers a farm to B for his life with a proviso that, in case B cuts down a certain wood the transfer shall cease to have any effect B cuts down wood He loses his life interest in the farm

(*b*) A transfers a farm to B provided that if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease B does not go to England within the term prescribed His interest in the farm ceases

Such condition must not be invalid

32 In order that a condition that an interest shall cease to exist may be valid it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest

Transfer conditional on performance of act no time being specified for performance

33 Where on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act but no time is specified for the performance of the act the condition is broken when he renders impossible, permanently or for an indefinite period the performance of the act

Transfer conditional on performance of act, time being specified

34 Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him or as a condition on the non fulfilment of which the interest is to pass from him to another person and a time is specified for the performance of the act if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non fulfilment of the condition such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud But if no time is specified for the performance of the act then if its performance is by the fraud of a person interested in the non fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled

Election

Election when necessary

35 Where a person professes to transfer property which he has no right to transfer, and as a part of the same transaction confers any benefit on the owner of the property such owner must elect either to confirm such transfer, or to dissent from it, and

in the latter case, he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had been not disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or *value of the property attempted to be transferred to him*

Illustrations

The firm of Sultanpur is the property of C and worth Rs 800 A, by an instrument of gift professes to transfer it to B giving by the same instrument Rs 1 000 to C C elects to retain the farm He forfeits the gift of Rs 1 000

In the same case A dies before the election His representative must out of the Rs 1,000 pay Rs 800 to B

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect

A person who in his own capacity takes a benefit under the transaction may in another dissent therefrom

Excepting to the last preceding four rules —Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election or if he waives enquiry into the circumstances

Such knowledge or waiver shall in the absence of evidence to the contrary be presumed if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done

Illustration

A transfers to B an estate to which C is entitled, and, as part of the same transaction gives C a coal mine C takes possession of the mine and exhausts it He has thereby confirmed the transfer of the estate to B

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period require him to make his election , and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer

In case of disability the election shall be postponed until the disability ceases, or until the election is made by some competent authority

Notes [illegible] a benefit under a Will is not precluded by doctrine [illegible] he testator was engaged long [illegible] Will at all 14 L W 33 , see [illegible] , *vide* 78 Ind Cas 191

Apportionment

Apportionment of periodical payments on determination of interest of person entitled

36 In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income, shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof

Notes—Under this section, in the absence of a contract or local usage to the contrary, all rents shall upon the transfer of the interest of the person entitled to collect them, be decreed, as between the transferor and the transferee to accrue from day to day and to be apportionable accordingly 9 C P L R 130 But the profits attaching to a share in a village cannot be apportioned in the manner provided for in this section 14 C P L R 84 By s 2 cl (b) this section does not apply to execution sale 21 C 283, see also 64 Ind Cas 171 (1922) All 275

Apportionment of benefit of obligation on severance

37 When in consequence of a transfer property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall in the absence of a contract to the contrary amongst the owners be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed, and that the severance does not substantially increase the burden of the obligation, but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs

Illustrations

(*a*) A sells to B, C and D a house in t[illegible]
rent of Rs 30 and delivery of one fat sheep [illegible]
money and C and D one quarter each E, [illegible]
B, Rs 7½ to C, and Rs 7¼ to D, and must [illegible]
direction of B, C and D

(*b*) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation E had agreed as a term of his lease to perform this work for A B C and D severally require E to perform the ten days work due on account of the house of each E is not bound to do more than ten days' work in all according to such directions as B, C and D may join in giving

Notes—When the lessor recognizes the rights of another to a share of the property the tenants are bound to pay each of the owners his proportionate share of rent They are not bound to perform the various obligations imposed on them as lessees, wholly in favour of either the lessor or the other, if such obligation is capable of severance and such performance will not be to their prejudice 20 M 29

B—Transfer of immovable property

Transfer by person authorized only under certain circumstances to transfer

38 Where any person, authorised only under circumstances in their nature variable to dispose of immovable property, transfer such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one

part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith

Illustration

A, a Hindu widow, whose husband has left collateral heirs alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable to sell a field part of such property to B B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance and that the sale of the field is necessary and acting in good faith buys the field from A As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed

Transfer where third person is entitled to maintenance

39 Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property and such property is transferred * the right may be enforced against the transferee, if he has notice 'thereof' † or if the transfer is gratuitous but not against a transferee for consideration and without notice of the right, nor against such property in his hands ‡

Notes —Section 39 is intended to protect persons who are entitled to receive maintenance or for whom provision ... from the profits of any immovable property ... enforced against a transferee of the pr... the intention of defeating the right ... The Courts have therefore, always required proof of the intention on the part of the transferor and also of notice of the intention to the transferee (22 All 326, 24 All 160) The illustration to the section is not consistent with the section itself and does not make any reference to the intention of the transferor In actual practice it is impossible to adduce proof of mere intention As stated in 12 Bom L R 1075 at pp 1077 and 1078, in order to enable such proof to be adduced, a transferor must have announced his fraudulent intention of defeating the rights of persons entitled to maintenance and the transferee must have heard him doing so As it is desirable to protect persons entitled to maintenance or for whom provision for advancement has been made from improvident holders of the property it is necessary that the reference to the transferor's intention should be omitted from the section, and the section should be amended accordingly —*Report of the Special Committee*

... when property is charged with maintenance by ... 551=28 A 655 Where ... to recover maintenance is ... 23 B 242 The two parts ...

Burden of obligation imposing restriction on use of land,

40 Where, for the more beneficial enjoyment of his own immovable property, a third person has, independently of any interest in the immovable property of another or of any easement thereon a right to restrain the enjoyment ' in a particular manner of the latter property, † or

* Certain words after this repealed by Act XX of 1929 have been omitted

† Substituted by Act XX of 1929

‡ Illustration after this has been omitted by Act XX of 1929

where a third person is entitled to the benefit of an obligation arising out of contract, and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon,

or of obligation annexed to ownership, but not amounting to interest or easement

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands

Illustration

A contracts to sell Sultanpur to B While the contract is still in force he sells Sultanpur to C, who has notice of the contract B may enforce the contract against C to the same extent as against A

Notes —A mortgagee who had notice that the title deeds were with a third person as a security to another debt under a subsisting contract to mortgage, will be postponed to the equitable right of that person 29 M 117 This section is applicable only when there is contract between vendor and vendee that some other land should bear the burden of the encumbrance 6 M L T 119 Judicial sales would be robbed of all their security if vague references to antecedent contract could be held to invalidate the buyer's title (1922) P C 393 A transferee who purchases property knowing that it is encumbered with a debt is liable under this section to discharge the debt 57 Ind Cas 513

any act done in breach of such restriction 17 A L J 469

41. Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transforor was not authorized to make it. provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by ostensible owner

Ind Cas. 368

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501 Purchaser from an ostensible owner in possession of title deeds and acting in good faith is protected under this section 1 A L J 214; see also 9 Bom L R 388, 7 A L J 967=7 Ind Cas 442; 26 A 490, 8 A 409=A W N 1886 85, 8 Ind Cas 606, 1 Ind Cas 595; 26 C W N 436; 65 Ind Cas 477; 36 C L J 9, 63 Ind Cas 125, (1919) Pat 404, 22 A L J 693, 1924 Lah 738 The doctrine expressed in this section is of universal applicability. A purchaser from the ostensible owner cannot resist the real owner's claim unless he can show that he took

=44 A 674=1922 A 392=L R 3 A 509 It is not competent to a testator to restrain partition of a house bequeathed by him 29 C L J 494

Transfer by person having authority to revoke former transfer

42 *Where a person transfers any immovable property, reserving power* to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power

Illustration

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value Afterwards A, thinking that such a use has been made, lets the house to C This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value

Transfer by unauthorised person who subsequently acquires interest in property transferred

43 Where a person "fraudulently or"* erroneously represents that he is authorized to transfer certain immovable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at

in good faith for

Illustration

A, a Hindu, who has separated from his father B, sells to C three fields X Y and Z representing that A is authorised to transfer the same Of these fields, Z does not belong to A, it having been retained by B on the partition, but, on B's dying A, as heir, obtained Z C, not having rescinded the contract of sale, may require A to deliver Z to him

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143, ... The principle of this section will not apply ... ere the transferee knew of the absence of title in his transferor 78 Ind Cas 850 The principle of this section is a principle of law known as feeding the grant by estoppel 75 Ind Cas 217

* Added by Act XX of 1929

This section protects a purchaser without notice and there is no such provision in it as is found in s 4 requiring the transferee to take reasonable care to ascertain the power of his transferor to give a clear title 14 Bur L R 329 Before this section can be brought into operation there must in fact have been an inducement by erroneous representation (1918) Pat 278

Object of the Amendment—Section 43 refers to a person making an erroneous representation that he is authorised to transfer certain immovable property The underlying principle is also applicable to a case when the representation is fraudulent The expression 'erroneously' has in fact, been construed to include all representatives whether tainted or untainted with fraud (7 A 864, 20 C 296) It is however, desirable to make the meaning clear by using the word 'fraudulently along with the word 'erroneously'—*Report of the Special Committee* That there was erroneous or fraudulent representation must be shown before the section can be applied 48 A 150=92 Ind Cas 471, 68 Ind Cas 203, 19 C W N 1272, 59 Ind Cas 275, 52 Ind Cas 992, 35 M L J 120, 28 M L J 44

44 Where one of two or more co owners of immovable property legally competent in that behalf, transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor s right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, *the share or interests so transferred*

Transfer by one co-owner

Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house

Notes—A lessee is a transferee within the meaning of this section 3 A L J 474 The sale of rights of a co parcener in a Bazar is valid A W N 1900 81

45. Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common *they are*, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund, and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the share of the consideration which they respectively advanced

Joint transfer for consideration

In the absence of evidence as to the interests in the fund to which they were respectively entitled or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property

46 Where immovable property is transferred for consideration by persons having distinct interests therein the *transferors* are in the absence of a contract to the contrary entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value proportionately to the value of their respective interest

Transfer for consideration by persons having distinct interests

Illustrations

(a) A, owning a moiety and B and C each a quarter share, of mouza Sultanpur exchange an eighth share of that mouza for a quarter share of mouza Lalpura There being no agreement to the contrary A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mouza

(b) A, being entitled to a life interest in mouza Atrali, and B and C to the reversion, sell the mouza for Rs 1,000 A s life interest is ascertained to be worth

Rs 600, the reversion Rs 400 A is entitled to receive Rs 600 out of the purchase money B and C to receive Rs 400

47 Where several co owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors the transfer, as among such transferors, takes effect on such shares equally where the shares were equal and where they were unequal, proportionately to the extent of such shares

Transfer by co owners of share in common property

Illustration

A the owner of an eight anna share, and B and C, each the owner of a four anna share in mouza Sultanpur, transfer a two anna share in the mouza to D without specifying from which of their several shares the transfer is made To give effect to the transfer one anna share is taken from the share of A, and half an anna share from each of the shares of B and C

48 Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created

Priority of rights created by transfer

49 Where immovable property is transferred for consideration, and such property or any part thereof is, at the date of transfer, insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property

Transferee's right under policy

50 No person shall be chargeable with any rents or profits of any immovable property, with he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits

Rent *bona fide* paid to holder under defective title.

Illustration

A lets a field to B at a rent of Rs 50, and then transfers the field to C B having no notice of the transfer, in good faith pays the rent to A B is not chargeable with the rent so paid

Notes—The language of this section is general It applies even to cases where there has not been an assignment by the lessor during the tenancy 33 B 96=10 Bom L R 1190 A tenant is protecte[illegible] rent twice over if paid in good faith but if [illegible] an advance to the landlord and is not [illegible] rent 1921 Pat 352

51 When the transferee of immovable property makes any improvement on the property believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better [illegible] right to require the person causing the eviction eith[illegible] estimated and paid or secured to the [illegible] property to the transferee at the then market value thereof, irrespective of [illegible] value of such improvement

Improvements made by *bona fide* holders under defective titles

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops, and to free ingress and egress to gather and carry them

aning of this section, is not necessarily pre
a investigating title 32 M 530=19 M L. J
in England to raise an equity in favour of

him, and not to the person expending t
The law as laid down in this section,
law of England The section requires merely that the transferee mentioned therein shall have made the improvement believing in good faith that he is absolutely entitled to the property There is nothing in the wording of the section to justify the contention that the real owner must at the time of expenditure, know that the land belongs to him Under the section the transferee who, after having made the improvements on the property is subsequently evicted by any person having a better title, has a right to require the person causing eviction either to have the value of the improvement estimated and paid to him or to sell to him such person s interest
value of such improve
other of a Mahomedan
This section does not
also 17 M L J 622,

A purchaser from a limited owner is entitled to the cost of improvement when the true owner stood aside and abstained from asserting his rights 45 Ind. Cas. 242, 48 Ind Cas 859 A person who plants trees on another's land knowing he has no valid title to it, cannot claim compensation for loss suffered 1924 Nag 142 A tenant cannot get compensation under this Act 48 Ind Cas 354 There is no estoppel against a person challenging a sale merely because he took an active part in bringing about the sale 56 Ind Cas 492

Transfer of property pending suit relating thereto

52 During the "pendency"* in any Court having authority in British India or established beyond the limits of British India by the Governor General in Council of 'any'* suit or proceeding "which is not collusive and † in which any right to immovable property is directly and specifically in question, the property can not be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party there to under any decree or order which may be made therein, except under the authority of the Court, and on such terms as it may impose

"*Explanation* —For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force "†

Amendment —Section 52 deals with the doctrine of *lis pendens* It begins with

decree and property comprised in the decree is transferred four years after the

* Substituted by Act XX of 1929 † Added by Act XX of 1929

decree as in 37 Bom 621, or even after the date of decree, as in 12 Bom 217, the transfer could not be said to have been made ... er case the Court went so ... This view ... "to admi ... its of a similar nature in which ... 22 Bom. 939 was a mort ... case was made after the decree for sale and before the date of sale It was held following 21 W R 349 which was approved by the Judicial Committee in L. R 15 I A 97, that the transfer was *pendente lite*—*Report of the Special Committee*

Notes—The doctrine of *lis pendens* is not founded on the equitable doctrine of notice, but on the ground that it is necessary to the administration of justice that the decision of the Court in a suit should be binding not only on the litigant parties but on those who derived title from the *pendente lite* whether with notice of the suit or not. The effect of the doctrine of *lis pendens* is not to ann l the ... travention of it, but only to render it sub ... the litigation The doctrine is not applied ... of a defendant by virtue of a claim not inter fering with the title of the plaintiff in the pending litigation 9 Bom L R 173 This section imposes to conditions (*a*) the existence of a contentious suit, and (*b*) that the transfer should be during its active prosecution in the Court of the kind described in the section 31 B 393 The doctrine of *lis pendens* does apply to administration suits 1 Bur L J 133 But it applies to execution sale and revenue sale 3 Pat L T 296 It applies to involuntary transfers 66 Ind Cas 631 An alienee after preliminary decree but before final decree is bound by the doctr ne of *lis pendens* 82 Ind Cas 452 A lease after mortgage suit is affected by the doctrine of *lis pendens* 29 C W N 94, 1924 Nag 211, but see 1924 Nag 226

The doctrine of *lis pendens* is that *pendente lite* neither party to the litigation can alienate the property in dispute so as to affect his opponent 29 A 339=34 I A 102 P C, see also 15 Bom L. R 366 The doctrine of *lis pendens* is also applicable to conveyances made between the decree *nisi* passed in a mortgage suit and the institution of proceedings for bringing the property to sale 8 Ind Cas 288=6 N L R 140 This principle is applicable in cases where a decree is passed on a compromise 13 O C 98=6 Ind Cas 750, 17 C W N 413 The law of *lis pendens* in this country is founded on the necessity, if possible of a final adjudication and it is unjust that a plaintiff should be prejudiced by any acts of the defendant subsequent to the institution of the suit and with notice thereof 31 M 264=4 M L T 77 The doctrine of *lis pendens* applies to *exparte* decrees and in mortgage suit 13 C W N 138=3 Ind Cas 701 The essence of this section is that a transaction entered into during the pendency of a suit cannot prejudice the interests of a party to the suit who is not a party to the transaction 44 Ind Cas 726, see also 41 M 453, 43 Ind Cas 602, 42 B 215, 43 Ind Cas 934 Where a suit is dismissed for default but is subsequently restored on the ... lates back to the date of the applicat on ... notice is necessary in order to apply the

... tious qualifies the doctrine of *lis pendens* that is to say, that there can be no *lis pendens* without a contentious suit The expression 'during active prosecution' in the section subject to that qualification defines the point of time at which the rule comes into operation The former ... r fixes the commencement and con ... suit of any sort whatever, except ... ontentious And for the purpose of bringing the rule of *lis pendens* into operation, there must be active prosecution of that suit What is and what is not an active pr secution must be, from the very ... 31 B 393=9 ... ot become ... s 28 A ... roceeding as unopposed applications for probate 8 Ind Cas 288, see also 27 C 77=4 C W N 254 If a suit is not collusive, it is a contentious suit if it was so in its origin and nature, and even if it is subsequently compromised 25 C W N 806

Amendment—Contentious—'As to the word contentious' it was held in some cases that a suit becomes contentious only from the date on which summons

was served on the defendant (15 C 647, 27 C 77, 21 A 408), and in some cases

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and 'contentious' it is proposed to substitute the word 'pendency' for the words 'active prosecution,' and to omit the word 'contentious' and to add an explanation to make it clear when the pendency of a suit or proceeding shall be deemed to commence and when it shall be deemed to end

"We also propose to insert in the section the words 'which is not collusive,' for

Bom 703, 11 Bom

it must be pending in a

in the explanation

nation cases where an

order is passed against an intervenor in execution proceedings and the proper remedy in such cases is a suit under Order 21, rule 63 of the Code of Civil Procedure

that may arise by the applica-

gistration of suits prevailing in

n the Presidency towns This

the scope of our reference'—

Report of the Special Committe

Explanation—In the Explanation which prescribed the period during which *lis pendens* is to operate we have provided for the case of discharge of a decree by the relinquishment by a decretal rights—*Report of the Select Committe*

*53 (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed

Fraudulent transfer

Nothing in this sub section shall impair the rights of a transferee in good faith and for consideration

Nothing in this sub section shall affect any law for the time being in force relating to insolvency

whether

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transferor, shall be instituted on behalf of, or for the benefit of, all the creditors

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee

For the purpose of this sub section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made'

Reason of the amendment—The first and third paragraphs of old section 53 are taken from 13 Eliz c 5 and 27 Eliz c 4 Both these statutes applied to Presidency towns (22 W R 60, 6 M H C R 455, 474, 25 B 202 208 209), and were repealed by the Transfer of Property Act, so far as they applied to those towns, 13 Eliz c 5 dealt with transfers made with intent to defeat or delay creditors, and 27 Eliz c 4 dealt with transfers made with intent to defraud subsequent transferees

which the first relating

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e section is based on

* Substituted by Act XX of 1929

On the statute 27 Eliz c 4 the English decisions are clear to the effect that a voluntary transfer of land, afterwards made the subject of a conveyance for valuable consideration, may be avoided by subsequent purchaser although in making the voluntary conveyance there was no actual fraud and although the purchaser had notice of the settlement , see I Smith's Leading Cases 12th edition, page 27th From the fact that the settlor afterwards conveyed the land to a purchaser for considera tion it was inferred that voluntary conveyance was made with intent to defeat the purchaser 'The principle appears to be that by selling the property for a valuable consideration, the settlor so entirely repudiates the former voluntary conveyance and shows his intention to sell, as that it shall be taken conclusively against him and the person to whom he conveyed, that such intention existed when he made the conveyance and that it was made in order to defeat the purchaser" "It may be assumed," said *Grant M R*, that a voluntary settlement however free from actual fraud, is by the operation of that statute (27 Eliz c 4) deemed fraudulent and void against a subsequent purchaser for a valuable consideration even when the purchase has been made with notice of the voluntary settlement" He added, however, that he had great difficulty in persuading himself that the words of the statute warranted or that the purpose of it required such a construction, for it was not easy to see how a purchaser could be defrauded by a settlement of which he had notice before he made his purchase

The English decisions were followed by *Couch C J* in *Judah* v *Abdool*, (1874) 22 W R 60, a case decided before the Transfer of Property Act came into force Following the same principle *Sale J* held in *Joshua* v *Alliance Bank of Simla*, (1895) 22 Cal 185, that the words 'may be presumed' in paragraph 2 of the section should be construed as equivalent to shall be presumed' and that a voluntary transfer of immovable property afterwards made the subject of a transfer for consi deration was void as against the subsequent transferee even though the subsequent transferee had notice of the previous transfer An appeal was preferred from the judgment of *Sale J* [illegible] deal specifically with the point of [illegible] cision was confirmed on other [illegible] from by *Jenkins C J* in *Bu* [illegible] v *Muhammad*, (1905) 7 Bom L R 207 As regard transfer made with intent to defraud creditors the Court in India have held that the phrase 'may be presumed in the second paragraph should be given its plain meaning that is to say, the meaning which it bears in the Indian Evidence Act 1872 section 3 The result is that the same phrase "may be presumed' may have one meaning attached to it in case of transfers made to defraud subsequent transferees and another mean ing in case of transfers made to defeat or delay creditors Again paragraph 3 of the section can hardly apply to cases where there is contest between a prior voluntary [illegible] is desi [illegible]

Paragraph 2 of section 53 lays down a rule of evidence It says that when the effect of any transfer of immovable property is to defeat or delay creditors, and the transfer is made gratuitously, the transfer may be presumed to have been made with intent to defeat or delay creditors The words 'when the effect of any transfer is to to defeat or delay creditors' have given rise to considerable difficulty and the Courts have resorted to English decisions to determine when a voluntary transfer can be said to have that effect But even in England the course of decisions on the subject is not uniform In *Spirett* v *Willows*, 3 De G J & S 294, *Lord Westbury* laid down two separate rules—one as to creditors existing at the date of the transfer and another as to subsequent creditors In *In re Lane Fox* (1900) 2 Q B 508 *Wright J*, adopted the second rule laid down by *Lord Westbury*, and held that an honest voluntary settlement made by a solvent person was not to void merely be cause it proved some years afterwards *to have the effect* of defeating or delaying subsequent creditors In *Freeman* v *Pope*, 5 Ch App 538 it was laid down that it is not 'necessary te prove any *actual* intention to delay creditors where the facts are such as to show that the necessary consequence of what was done was to delay them," and that in such cases the intent must be inferred This doctrine that the intent *must* be inferred was critised in *Ex parte Mercer*, 17 Q B D 290, a case which was approved by the Court of Appeal *In re Holland* (1902) 2 Ch 360

The principle now generally adopted by the Courts in England is that laid down by *Kindersley V C*, in *Thompson* v *Webster*, 4 Drews, 628 at p 632 That principle is as follows —

'It is not necessary, in order to set aside a voluntary deed that a settlor should be actually in a state of *insolvency* The principle now established is this the language of the Act being that any conveyance of property is void against creditors if it is made with *intent* to defeat hinder or delay creditors the Court is to decide in each particular case whether, or all the circumstances, it can come to the conclusion that the *intention* of the settlor in making the settlement, was to defeat, hinder or delay his creditors'

The above statement of the law was accepted as correct by the Judicial Committee in *Godfrey* v *Poole* 13 App Cas 497 Again in *In re Holland* (1901) 2 Ch 360 it was held by the Court of Appeal that in considering whether a conveyance was void under the statute the Court must look at the whole of the circumstances surrounding the execution of the conveyance and see whether it was *in fact* executed with the intent to defeat and delay creditors It is therefore proposed to delete paragraph 2 of section 53 and to leave the determination of the question of intent to be dealt with according to the ordinary rules of evidence

Coming now to transfers made with intent to defraud subsequent transferees for value we have already referred to the English cases by which it was determined that every voluntary conveyance of immovable property was void as against a subsequent purchaser for value These decisions as stated above were followed by *Sale J* but the law in Engla [illegible] tary Conveyances Act 1893 (56 and 57 [illegible] t a voluntary conveyance if made *bonafide* [illegible] ould not be deemed fraudulent within the [illegible] subsequent purchase for value Section 2 of the Voluntary Conveyances Act has been repealed by the English Law of Property Act, 1925 and reproduced in section 173 of that Act We think that a similar provision should be made and we have done so accordingly in sub section (2)

For the reasons already given we have included paragraph 3 of section 53 in the new sub-section (1)

To make sub section (1) more comprehensive we have provided as is done in section 172 of the English Law of Property Act 1925 that nothing contained in sub section (1) shall affect the law of insolvency for the time being in force Thus [illegible] oided [illegible] f the [illegible] rency [illegible] ause [illegible] t of a [illegible] 4 Ch [illegible] Presidency towns Insolvency Act and section 6 of the Provincial Insolvency Act or it may be void as amounting to a fraudulent preference within the meaning of section 56 of the Presidency towns Insolvency Act and section 54 of the Provincial Insolvency Act

[illegible] suit to set aside a transfer on [illegible] it or delay creditors should be [illegible] competent to any one creditor [illegible]

Eliz c 4 went the same way and it was [illegible] should be brought by the plaintiff on behalf of himself and all other unsatisfied creditors of the deceased, see *French* v *French*, 6 De G M & G 95 *Richardson* v *Smallwood*, Jac. 552 In 42 Mad 143, however the opinion was expressed that a suit to avoid a transfer made with intent to defraud creditors may be instituted by a single creditor We are unable to accept this opinion The practice followed by the High Courts of Calcutta and Bombay is in accordance with form No 13 Appendix D to Schedule I of the Code of Civil Procedure 1908, and is based on the wholesome principle that the transferee should not be exposed to a multiplicity of suits at the instance of various creditors We think it is desirable to give statutory recognition to this practice We also do not agree with the view expressed by the

High Court of Madras that a decree-holder is not a creditor and that he may therefore bring a suit on his own behalf to set aside the transfer. We have accordingly added a new paragraph

The first paragraph of section 53 contains the words "prior or subsequent transferees," but it is difficult to see in what cases prior transferee could have any reason to complain for a completed transfer must always, in the absence of a special contract binding the transferee, take precedence of a later transfer *see* section 48 of the Act Hence we have omitted the word "prior"

The first paragraph also contains the words having an interest in such property" It is difficult

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*"**53A** Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

Part performance

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof"

Reason of the amendment—We have proposed a more rigorous use of registration in the transfer of immovable properties than is now enjoined by law, and the changes we have proposed are, we think, calculated to minimise, if not to prevent perjuries and frauds We cannot, however, ignore the fact that in actual practice circumstances do arise when the rigorous application of the law of registration may result in fraud instead of preventing it Similar circumstances led to the introduction of the doctrine of part performance in England

By section 4 of the Statute of Frauds (1677) (29 Car II C 3) it is provided that

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" (*Ibid*, section 1017)

* Added by Act XX of 1929

In applying the doctrine of part performance the Courts have confined it within strict limits From the decided cases the following may be taken to be essential elements necessary for the application of the doctrine —

(1) that the transferee has been put in possession of the property ,

(2) that his possession can be referred to the particular trans fer and not to any other relationship ;

(3) that it will amount to a fraud on the part of the transferor to back out of such transfer , and

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by the Indian Courts to cases where the transfer was not effected by a registered instrument In the case of *Mohamed Musa* v *Aghore Kumar Ganguly*, (42 I A 1), their Lordships of the Privy Council observed —

"They do not think that there is anything either in the law of India or of England inconsistent with it the doctrine of part performance but upon ... *Lord Selborne* in
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excluded, injustice of a kind, which the statute cannot be thought to have had in contemplation would follow"

Their Lordships further said —' The matter has advanced beyond the stage of contract ; and the equities which arise out of the stage which it has reached cannot be administered unless the contract is regarded They go on to say — Many authorities are cited in support of these propositions from English and Scotch Law and no countenance is given to the propositions that equity will fail to support a transaction clothed imperfectly in those legal forms to which finality attaches after the bargain has been acted upon From these authorities one dictum quoted by *Lord Selborne* from Sir John Strange (1 Ves 441) may be here repeated , 'if confessed or in part carried into execution it will be binding on the parties and carried into further execution as such, inequity Their Lordships do not think that the law of India is inconsistent with these principles , on the contrary it follows them

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We do not think that the time has arrived when this equitable doctrine can be safely abrogated in favour of a rigid application of the law of registration Ignorant transferees in this country who have partly performed the contract require a greater ... England When a transferee has,
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treat the transferee as a trespasser
hould be given to the doctrine of
part performance At the same time care should be taken that the law of registra tion is not evaded and that the introduction of the doctrine does not lead to 'per juries and frauds ' which it is the object of the doctrine to prevent With this end in view we propose—

(1) that the agreement should be in writing signed by the party or his agent whom it is sought to bind ,

(2) that the transferee should in part performance of the contract take posses *sion of the property or, if already in possession and in the latter case should do* some act in furtherance of the contract ,

(3) that the transferee seeking to avail himself of the doctrine should perform or be willing to perform his part of the bargain as contained in the writing ,

(4) that when the contract has been partly performed all rights and liabilities under the contract should arise and be enforceable as between the parties to the

contract notwithstanding that the transaction has not been completed according to law , and

(5) that the application of the doctrine should not affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof

We think that it should be made clear that by reason of the part performance,

account of non registration no title has passed, yet by reason of part performance equities have arisen which Courts of law ought to recognise and enforce As pointed out in Mahomed Musa s case when a contract has been partly performed, the matter

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in performance of such an agreement the lessee takes possession he may not even sue for specific performance because he cannot prove the agreement if it be not registered (See 26 C W N 320) Such a state of things enables the lessor to treat the lessee in possession as a trespasser and thereby practise a fraud upon him We think that the Courts should be in a position to

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may be proved in Court notwithstanding non re

evidence, it is desirable in our opinion that the agreement should in a l cases b writing when the doctrine of part performance is sought to be invoked

We are not unmindful of the weighty opin on expressed in chapter 35 of the report of the C vil Justice Committee That Comm ttee has recommended a rigid application of the law of registration and the rejection of the doctrine of part performance The principal objections formulated by the Committee are—

(1) The recognition of the doctrine is inconsistent with the necessity for registration We have shown that in as much as part performance cannot confer a title registration would still be necessary

(2) A mass of perjured evidence will be introduced if oral agreements are allowed to be proved To meet this objection we have proposed that the agreement

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30A to the Specific Relief

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that period remain the same In fact the longer the possession in part performance the higher will be the equities We, therefore, think that, in order that the rel ef may be effective it ought to be available at all times during which the transferee is in possession in part performance of the contract and subject to the other conditions which we have proposed In 46 Mad 919 and 23 C W N 284 the Courts took the

view that the relief was available even after the period of limitation for specific performance was over We feel that in order that the relief may be real, it ought to be available as between the parties to the transaction even after such period of limitation

It is necessary in this connection to have a new section in the Specific Relief Act dealing with the same subject, and we have, therefore, proposed the addition of section 30A at the end of Chapter II in the Specific Relief Act We propose that [illegible] statutory recognition of part performance is a matter of considerabte importance we think it desirable to explain in further detail the reasons for the various recommen tions we are making

(1) In order to avoid perjured evidence which is likely to centre round an oral agreement we are providing for the agreement to be in writing

(2) If possession be taken in part performance of the contract, that fact along with the writing ought to be sufficient to attribute the possession to the agree ment But in the case of a person already in possession we have recommended some further act of part performance, *e g* ; by payment of different rent or the speding of money, because the possession may not be exclusively referable to the agreement

(3) *In proving that the transferor shall be debarred from enforcing against* a transferee any rights except such as aris out of the agreement we desire to make it clear that the rights arising out of the contract as between the trans feror and the transferee should be enforceable as if the transfer has been comple ted according to law This provision will prevent a transferor from ejecting a a transferee who has in part performance of the contract taken possession, and at the same time enable the transfer to sue the transferee upon his covenant, say, to pay rent The effect of this provision will be that the mutual covenants between the transferor and the transferee will be operative, though by reason of non registration no title has passed This will necessitate the completion of the transfer according to law by execution and registration in order that the transferee may get a market able title Thus the law of registration will not be evaded

(4) We have provided for a further safeguard in that the equities arising out of part performance may not affect the rights of a transferee for value without notice This will again have the effect of requiring the completion of the transfer according to law because otherwise the first transferee will be in a precarious position in the case of a subsequent transferee for value without notice asserting his right under such subsequent transfer The claims of the subsequent transferee will of course be subject to the doctrine that, ordinarily possession will constitute notice of the title of the person in possession Thus the transferor will not find it easy to practise a fraud upon the transferee in possession by making a second transfer The second transferee will have notice of the title of the first transferee in possession whatever that title may be The protection given to the second transferee is not illusory because under the amended section 3 of this Act he will be regarded as having notice of the title of the person in actual possession and not of the title of the prior transferee who may be only in constructive possession Therefore, it would be still necessary for the first transferee in con structive possession to have his transfer perfected according to law by regis tration and thereby acquire an indefeasible title"—*Report of the Special Committee*

CHAPTER III

OF SALES OF IMMOVABLE PROPERTY

54 'Sale' defined

'Sale' is a transfer of ownership in exchange for a price paid or promised, or part paid and part pro mised

contract notwithstanding that the transaction has not been completed according to law, and

(5) that the application of the doctrine should not affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof

We think that it should be made clear that by reason of the part performance, although the terms of the contract are made binding on the parties thereto the transferee will not get a good title unless the transfer is effected according to law, that is, executed and registered In this view registration would still be necessary in order that the transferee may acquire a perfected and marketable title But although on account of non registration no title has passed, yet by reason of part performance equities have arisen which Courts of law ought to recognise and enforce As pointed out in Mahomed Musa's case, when a contract has been partly performed, the matter

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view that the relief was available even after the period of limitation for specific performance was over We feel that in order that the relief may be real, it ought to be available as between the parties to the transaction even after such period of limitation

It is necessary in this connection to have a new section in the Specific Relief Act dealing with the same subject, and we have, therefore, proposed the addition of section 30A at the end of Chapter II in the Specific Relief Act We propose that section 49 of the Registration Act should be amended so as to provide for the admission of unregistered documents required by law to be registered, for the purpose of proving part performance within the meaning of the new section 53A of the Transfer of Property Act and section 30A of the Specific Relief Act Inasmuch as the statutory recognition of part performance is a matter of considerable importance we think it desirable to explain in further detail the reasons for the various recommen tions we are making

(1) In order to avoid perjured evidence wh ch is likely to centre round an oral agreement we are providing for the agreement to be in writing

(2) If possession be taken in part performance of the contract, that fact along with the writing ought to be sufficient to attribute the possession to the agreement But in the case of a person already in possession we have recommended some further act of part performance, *e g* , by payment of different rent or the speding of money, because the possession may not be exclusively referable to the agreement

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CHAPTER III

OF SALES OF IMMOVABLE PROPERTY

54 'Sale" is a transfer of ownership in exchange for a price paid or promised, or part paid and part promised

'Sale' defined

Sale how made

Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, *or in the* case of a reversion or other intangible thing, can be made only by a registered instrument

In the case of tangible immovable property of a value less than one hundred rupees, such *transfer may be made either by a registered instrument* or by delivery of the property

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property

Contract for sale

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties

It does not of itself, create any interest in, or charge on such property

Notes —The mere fact of non payment of the purchase money does not render a sale of immovable property invalid, or prevent the passing of the ownership to the purchaser 57 Ind Cas 948 But it is open to the parties to contract that ownership shall not pass until the fulfilment of certain conditions 55 Ind Cas 659, see also 43 M 722 Unregistered sale deed for Rs 20 is only evidence of contract 56 Ind Cas 382 The plaintiff on the basis of an oral sale is entitled to a registered sale deed even against a subsequent purchaser with notice 44 B 580, 65 Ind Cas 405, 46 B 722 Where a sale deed is unregistered the vendee cannot rely upon it as evidence even in a suit for specific performance 44 P L R 159 An unregistered sale deed followed by a delivery of possession is effective to pass title where the property conveyed is worth less than 100 rupees 18 N L R 8 The expression 'price' means money 45 M 612 Where in pursuance of an *agreement to transfer property the intended transferee has taken possession* though the legal documents have not been executed and registered, the position is the same as if the documents have been executed 27 C W N 149 A transfer of immovable property in lieu of dower amounts to a sale and can only be affected by a registered document 64 Ind Cas 126 But a transfer of land in lieu of future maintenance by unregistered instrument, is valid 45 M 612 The registration of a sale deed effects a transfer of the property to the vendee by virtue of this section 17 M 146 Under this section, a sale of immovable property of value less than Rs 100 may be validly made by mere delivery of possession thereof to *the vendee although the instrument of sale is not registered* This section gives two alternative methods of effecting the sale of such a property which are equally valid, (1) by execution of a registered instrument of sale or (2) by selling and delivering possession of property A W N 1885, 201, 11 Bom L R 1336, 8 C P L R 1, 5 C L J 390 = 34 C 207, 7M L T 372, 19 B 623 (F B), 16 C 622, 21 C W N 1149, 41 B. 550 When a person sells his immovable property of more than Rs 100 by receiving the purchase money, and delivering the property to the vendee, but executes a conveyance which is not registered as required by law, the sale is not complete and the property does not pass to the vendee 28 B 466 = 6 Bom L R 510 The interest of a simple mortgagee is plainly an intangible thing within the meaning of this section and can be transferred by [illegible] 63 Ind Cas 284, 48 [illegible] the clear provisions [illegible] merely to enact that [illegible] *affected by mere oral* [illegible] must be registered in [illegible] 54 is merely supple [illegible] operty Act does not [illegible] y 28 C L J 77

When an instrument purports to transfer title to property required to be registered the title does not pass until registration has been effected 5 Pat L J 715 When neither deed nor possession of the property sold be delivered to the vendee and no consideration passes, the mere registration of the deed of sale does *not operate to pass the title to the vendee* 59 Ind Cas 171 Though time is not ordinarily the essence of contract to sell land yet it can be made so by parties 85 Ind Cas 21 = 48 M L J 158 A contract for sale of immovable property does not of itself create any interest in, or charge on immovable property and hence does not require registration 86 Ind Cas 1021

55. In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold —

Rights and liabilities of buyer and seller

(1) The seller is bound—

(a) to disclose to the buyer any material defect in the property "or in the seller's title thereto"* of which the seller is, and the buyer is not aware, and which the buyer could not with ordinary care discover ,

(b) *to produce to the buyer on his request for examination all documents* of title relating to the property which are in the seller's possession or power ,

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect of the property or the title thereto ,

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place ,

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents ,

(f) to give, on being so required, the buyer, or such *person as he directs*, such possession of the property as its nature admits ,

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and except where the property is sold subject to incumbrances to discharge all incumbrances on the property then existing

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists, and that he has power to transfer the same

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered, or whereby he is hindered from transferring it

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof, from time to time, vested

(3) Where the whole of the purchase money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the *property which are in the seller's possession or power*

Provided that (a) where the seller retains any part of the property comprised in such documents he is entitled to retain them all, and (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents But in case (a), the seller, and in case (b) the buyer of the lot of greatest value is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require and in the meantime, the seller or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer ,

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* Added by Act XX of 1929

(*b*) where the ownership of the property has passed to the buyer before payment of the whole of the purchase money, to a charge upon the property in the hands of the buyer "any transferee without consideration or any transferee with notice of the non payment * for the amount of the purchase money or any part thereof remaining unpaid, and for interest on such amount or part "from the date on which possession has been delivered *

(5) The buyer is bound—

(*a*) to disclose to the seller any fact as to the nature or extent *of the* seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest,

(*b*) to pay or tender, at the time and place of completing the sale, the purchase money *to the seller* or such person as he directs *Provided that* where the property is sold free from incumbrances the buyer may retain, out of the purchase money, the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto,

(*c*) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property *not caused by the seller*,

(*d*) where the ownership of the property has passed to the buyer as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due

(6) The buyer is entitled—

(*a*) Where the ownership *of the property* has passed to him to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof,

(*b*) unless he has improperly declined to accept delivery of the property to a charge on the property as against the seller and all persons claiming under him to the extent of the seller's interest in the property, for the amount of any purchase money properly paid by the buyer in anticipation of the delivery and for interest on such amount, and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded *to him* of a suit to compel specific performance of the contract, or to obtain a decree for its rescission

An omission to make such disclosures as are mentioned in this section, paragraph 1, clause (*a*) and paragraph 5 clause (*a*), is fraudulent

Notes—It is not permissible to extract a single clause of this section and use it without relation to the clauses which have preceded it Each clause seems to *assume that the conditions imposed by those preceeding it have been satisfied* 7 Ind Cas 541

Sub sec 1 cl (a)—The words 'defects in the property" in this clause include not only the defects in the property itself, but also defects in the title of the property This clause casts upon the seller the duty of disclosing to the buyer all defects whether in the title or in the estate itself 7 W R 258, 58 Ind Cas 529 9 M 82, 25 Ch D 357, 1 C P D 145 20 B 522, 15 C 298 21 M 8 There is no obligation cast on the vender to disclose prior incumbrance 2 A L J 268

Reason of the change—Sub-clause (a) of clause (1) of section 55 *provides* that a seller is bound to disclose to the buyer any material defect in the property of which the seller is aware The expression material defect in the property has been held to include a defect in the title of the seller (I L R 20 Bom 522) We propose to give effect to the decision by inserting the words "or in the seller's title thereto in sub clause (1)

* Added by Act XX of 1929
† Certain words after this repealed by Act XX of 1929 have been omitted

Clause (b)—This clause is subject to the introductory words 'in the absence of a contract to the contrary' 41 C 860

Clause (d)—On a sale of land it is the duty of the seller to execute and deliver a valid conveyance of the property 65 Ind Cas 405, 31 C L J 87

Clause (f)—He is bound to give effective possession 8 Ind Cas 605, According to this section the vendee is entitled to possession after conveyance 5 M L T 205

Clause (g)—The person paying the revenue to save the property is entitled to be re imbursed by the vendor 8 Ind Cas 435 Where a mortgage decree was sold free from incumbrance the vendor is bound upon a principle analogous to that embodied in this section 'to pay off the claim of any attaching creditor against the decree sold, and hand the decree over to the purchaser free from incumbrance' 9 C W N 178, see also 4 C 566, 7 A 660, 22 C 28, 26 C W N 514, (1922) All 508

Sub-section (2)—Under this sub section, in the absence of a contract to the contrary, the seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same 13 C P L R 97, see also 7 A L J 752=6 Ind Cas 890, 15 M 50, 1 M L J 160 L B R (1893 900) 455 When the conditions of an auction sale were duly printed and published and would be purchasers were distinctly told to satisfy themselves as to the nature of the property sold there is 'contract to the contrary and the principles in s 55 regarding the essence of an implied covenant do not apply 65 Ind Cas 734, see also 50 Ind Cas 815

The effect of a covenant for title implied by this sub section can only be got rid
he does
convey
yer that
the interest, which he professes to transfer subsists and that he has power to transfer the same 45 Ind Cas 669 35 M L J 124

Sub Section 4 Cl (*b*)—Both in England and in India the vendor's lien for unpaid purchase money is non possessory He is only entitled to retain the title deeds and to a charge for the unpaid purchase money 30 M 524=17 M L J 450 There is no lien for purchase money when there is an undertaking that the balance would be paid later on 6 C W N 150 According to provisions of the Act the vendee is entitled to possession even though the purchase money is not paid and the vendor is entitled to have a statutory charge on the property for unpaid purchase money 8 Ind Cas 364 The Transfer of Property Act gives a statutory charge upon the estate to an unpaid vendor unless it be excluded by contract such a charge stands quite different from vendor's lien The Court has to find some thing either an express contract, or at least something from which it is a necessary implication that such a contract exists in order to exclude the charge given by the statute The chargte is not excluded by a mere personal contract to defer payment of a portion of the purchase money or to take the perchase money by instalment, nor is it excluded by any contract covenant or agreement with respect to the purchase money which is not inconsistent with the continuance of the charge 31 C 57 P C=31 I A 238=8 C W N 41 see also 46 B 195 The question whether the acceptance of a personal security by the holder of a lien from a person other than the purchaser destroys the lien is really one of intention whether the vendors intended to do so In the absence of any circumstances pointing to the conclusion there is no presumption in favour of abandonment of the lien 10 M L T 189, see also 5 M L T 205, 7 Ind Cas 639

The statutory charge in favour of the vendor is excluded by an express mortgage taken in respect of the amount of the unpaid purchase money 15 N L R 109=51 Ind Cas 721 The vendor of certain property took a mortgage for the balance of the purchase money, but the mortgage deed was not registered The vendor *brought a suit for the recovery and for enforcing his lien* 54 Ind Cas 503, see also 10 L W 518, 1921 M W N 514 43 A 319, 43 A 544, 203 Bom L R 1000, 35 M L J 304

Reason of the change—Sub-clause (*b*) of clause (4) of the same section provides that the vendor's lien for the purchase money can be enforced against the property in the hands of the buyer The provision as it stands is insufficient as

such lien can easily be defeated by the buyer by parting with the property It is therefore, proposed to provide that it can be enforced against the property in the hands not only of the buyer, but also of all other persons claiming under him if they have notice of the sale This clause is also silent as to the date from which interest on the unpaid purchase money should run It seems fair that it should run

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payment of the purchase money The transferees and legal representatives of a
seller
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under
(b) of
clause (6) should therefore, be omitted

"56 If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person the buyer is in the absence of a contract to the contrary entitled to have the mortgage debt satisfied out of the property or properties not sold to him, so far as the same will extend but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties"*

Marshalling by subsequent purchaser

Reason of the Amendment—"Section 56 purports to give effect to the doctrine of marshalling
against a seller It h
Allahabad that the b
419, 17 All 434) In
same view and held tha
and not as between a mortgagee of the seller and the buyer
of the seller to d s
ctice section 56 do s

s are subject to a
are more properties
is afterwards sold
and bring it into line
Report of the Special Committee

Discharge of Incumbrances on Sale

57 (a) Where immovable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in executi
Court may,
any party to t
into Court,—

Provisions by Court for incumbrances, and sale freed therefrom

(1) in the case of an annual or monthly sum charged on the property or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Government of India the Court considers will be sufficient by means of the interest thereof to keep down, or otherwise provide for that charge, and,

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of

* Substituted by Act XX of 1929 but it has no retrospective effect

further costs, expenses, and interest and any other contingency except depre ciation of investment, not exceeding one tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a large additional amount

(*b*) Thereupon the Court may, if it thinks fit and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing thinks fit to dispense with such notice, declare the property to be freed from the incum brance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court

(*c*) After notice served on the persons interested in, or entitled to, the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof

(*d*) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree

(*e*) In this section 'Court' means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a Dis trict Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may from time to time, by notification in the Official Gazette declare to be compe tent to exercise the jurisdiction conferred by this section

CHAPTER IV.

Of Mortgages of Immovable Property and Charges

Mortgage mortgagor mortgagee,' mortgage money and "mortgage deed defined

58 (*a*) A mortgage is the tran fer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan an existing or future debt, or the perfor mance of an engagement which may give rise to a pecuniary liability

The transferor is called a mortgagor, the transferee a mortgagee, the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage deed

Simple mortgage

(*b*) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the

ly, that in the event of his

gagee shall have a right to e

proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage money, the transaction is called a simple mortgage, and the mortgagee a simple mortgagee

Mortgage by conditional sale

(*c*) Where the mortgagor ostensibly sells the mortgaged property—

on condition that, on default of payment of the mortgage money on a certain date, the sale shall become absolute, or

on condition that, on such payment being made, the sale shall become void, or

on condition that, on such payment being made, the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale, and the mortgagee a mortgagee by conditional sale

'Provided that no such transaction shall be deemed to be a mortgage unless the condition is embodied in the document which effects or purports to effect the sale '*

(*d*) Where the mortgagor delivers possession "or expressly or by implication binds himself to deliver possession * of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage money and to receive the rents and profits accruing from the property, "or any part of such rents and profits and to appropriate the same"† in lieu of interest, or in payment of the mortgage money, or partly in lieu of interest, "or"† partly in payment of the mortgage money, the transaction is called an usufructuary mortgage, and mortgagee an usufructuary mortgagee

Usufructuary mortgage

(*e*) Where the mortgagor binds himself to repay the mortgage money on a certain date, and transfer the mortgaged property absolutely to the mortgagee, but subjecs to a proviso that he will retransfer it to the mortgagor upon payment of the mortgage money as agreed, the transaction is called an English mortgage

English mortgage

*'(*f*) Where a person in any of the following towns, namely, the towns of Calcutta, Madras Bombay, Karachi, Rangoon, Moulmein Bassein and Akyab and in any other town which the Governor General in Council may, by notificatfon in the *Gazette of India*, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds

(*g*) *A mortgage which is not a simple mortgage*, *a mortgage by* conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title deeds within the meaning of this section is called an anomalous mortgage

General—A deed of indemnity whereby property is hypothecated is a deed of mortgage 5 A L J 723 ee also 9 M L T 309 A document purporting to be one of sale though it is accompanied by a contract reserving to the vendor a right of re purchase is not on that account to be construed as if it were a mortgage The test to apply is whether the relation of the debtor and creditor subsists between the parties 15 Ind Cas 423 A document attested by a witness does not create a mortgage 11 A L J 141 (F B) This section does not require the personal signature of the mortgagor, and that if his signature is affixed to the instrument of mortgage by another under his authority which authority need not be by a deed in writing that is in effect the signature of the mortgagor himself and is sufficient to constitute a valid morgage 24 A 319 (F B)=A W N 1902, 127 One of the ... ment cannot

... sufficient attestation 1 N L R 14 Signature of a scribe or that of the Registrar is not sufficient 10 Bom L R 943 Acknowledgment of execution before attesting witnesses is sufficient 6 A L J 737 An equitable mortgage can be made by deposit of title deeds in one of above mentioned places 6 L B R 23, 17 A 252, 14 A 238 *A very important test of mortgage is to see whether interest is to* run on the sum advanced 65 Ind Cas 673

Simple mortgage—The definition of simple mortgage is only a reproduction of the older law and is therefore applicable to a deed executed before the passing of the Act 13 A 28=A W N 1890 216 See cases reported in 9 C W N 1001, 9 C W N 697

Amendment—Reason of the change—The words "if any" in paragraph 2 are now superfluous and should be omitted

* Added by Act XX of 1929, but it has no restrospective effect
† Substituted by Act XX of 1929, but it has no restrospctive effect

... gage by conditional sale It is ... mortgages can be distinguished ... luse (c) of section 58 indicates, ... transactions is that, in the case ... stensible, whereas in the case of an out and out sale it is real The ostensible or real nature of the transaction can, however, be only determined by finding out the intention of the parties In order to escape the liability of accounting for the profits of the property and other liabilities imposed on a mortgagee and also to escape the provisions of some of the local laws enacted for the benefit of agriculturists, creditors resort to the mode of having a mortgage which is in form an out and out sale Since the decision of the Privy Council in *Balkishen Das* v *Legge*, (I L R 22 All 149), it has been a well settled rule that it is not open to Courts to allow any extraneous evidence in order to find out the intention of the parties Such intention must, therefore be gathered from the document itself which purports to effect the transaction These transactions have given rise to a great deal of litigation and Courts are compelled to enumerate and consider all the various criteria which have been laid down for the purpose of determining whether a transaction is a mortgage or an out and out sale In order to avoid difficulties indicated above, we think it is desirable to lay down a statutory test by which the intention is to be gathered We, therefore propose that no transaction should be deemed to be a mortgage by conditional sale unless the condition is embodied in the document which operates or purports to effect the sale

In a suit on a usufructuary mortgage where possession had not been delivered the Madras High Court held that the mortgage money had not become due under section 68 of the Transfer of Property Act that under section 67 the mortgagee was entitled to a decree for sale They held that the provision of the latter section that the usufructuary mortgagee has no right to sale did not apply on the ground that delivery not having been effected, the transaction did not amount to a usufructuary mortgage (I L R 41 Mad 259) It seems to us that the High Court in that case omitted to notice that the mortgagee could only sue for the mortgage money under section 68 on the basis of the transaction being a usufructuary mortgage and on no other and that the same transaction could not be treated as a usufructuary mortgage for the purpose of attracting the provisions of section 68 and as not being a usufructuary mortgage for the purpose of applying section 67 The remedy of a usufrutuary mortgagee to whom possession is not delivered is to sue for possession and the mere fact that possession is not delivered cannot alter the character of the transaction (7 N W P 56, 7 Beng L R 14, I L R 10 Cal 68, 4 I A 15, 31 All 318) We think it necessary to amend the section so as to avoid the anomalous result arrived at in the Madras case quoted above We accordingly propose that after the words 'where the mortgagee delivers possession' the words 'or expressly or by implication binds himself to deliver possession' should be inserted

The definition of a usufructuary mortgage is not exhaustive It does not provide for a case where the mortgagee is entitled to appropriate a portion only of the income of the property mortgaged in payment of the mortgage money We propose to alter the section accordingly

Section 98 only deals with certain classes or types of anomalous mortgages and ... define anomalous mortgages as ... clauses (b) to (d) of section 58 ... ction as a separate clause The ... mortgages should be dealt with ...

Usufructuary mortgage —Where a due date has been fixed for the payment of mortgage money the mortgage is not a purely usufructuary mortgage 65 Ind Cas 666

... as defined ... the mort- ... transferred ... l be made ... mortgagor, ... mortgagor

Mortgage by deposit of title deeds —'We propose to insert in section 58A definition of the mortgages referred to in section 59 as mortgages by deposit of title deeds' —*Report of the Select Committee*

Mortgage by deposit of title deeds how created —The deposit of title deeds, however, is not infrequently accompanied by an agreement either verbal or written in which an intention to create a charge is express y stated When this is the case the transaction does not substantially differ from an express consensual mortgage , and it may be said that there is no reason why, as between part es who can pass land without a formal deed and without delivery of possession such a transaction should not be given effect to *Ghose s Mortgage* p 204 , see also *Verden* v *Luckpatty* 9 M I A 307, 324 , *Keys* v *Williams*, 37 C Ex R 60 61 In such a mortgage "the mortgage is created by the agreement which is evidenced by the loan and the deposit of the title deeds The mortgagee may, therefore rely upon the parol agreement which is implied by the deposit of the title deeds 20 W R 150=11 B L R 405

Mortgage when to be by assurance

59 Where the principal money secured is one hundred rupees or upwards a mortgage 'other than a mortgage by deposit of title deeds * can be effected only by a registered instrument signed by the mortgagor, and attested by at least two witnesses

Where the principal money secured is less than one hundred rupees a mortgage may be effected either by a registered instrument † signed and attested as aforesaid or (except in the case of a simple mortgage) by delivery of the property ‡

ed by s 59 of the Act, not xecution of the document the executant of his sig testation of certain mortgage deeds by two witnesses required by this section is attestation of actual fact of execution 16 C W N 1009 P C , 16 Ind Cas 207 One who is not a party though interested in the advance, can attest 13 Bom L R 944 The attestation required by this section is an attestation by witnesses of the execution of the document and not by the admission of execution 14 C P L R 42 But see A W N 1896 89 Scribe of a deed is competent to become an attesting witness A W N 1897, 146 See cases reported in A W N 1899 196 , 3 M L T 300=31 M 737 , 2 N L R 10 33 C 861 , 27 B 91 , 13 C W N 40 , 7 C W N 384 1 N L R 14 Where a mortgage is signed by a writer as well as the mortgagee ... is not validly attested ... deposit of title deeds ... uitable mortgage does

... mises mortgage by deposit of Calcutta, Madras Bombay in any other town which the ie *Gazette of India* specify in a creditor or his agent docu reate a security there n No registration is required in the case of such a mortgage hence the amendment in clause a) is necessary By inclusion of mortgage by deposit of title deeds in section 58 of the Act the third paragraph of section 59 has become unnecessary

References to mortgagors and mortgagees to include persons deriving title from them

*¹ 59A Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively'

* Added by Act XX of 1929
† Substituted by Act VI of 1904 s 3
‡ Para 3 has been omitted by Act XX of 1929

Reaso ... gor' and 'mortgagee' as used ... rsons deriving title from thei ... and 21 All 223) In order to n ... 59 A —*Report of the Special Committee*

Rights and Liabilities of mortgagor.

60 At any time after the principal money has become "due* the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage money, to require the mortgagee (*a*) to deliver "to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee"† (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished

Right of mortgagor to redeem

Provided that the right conferred by this section has not been extinguished by act of the parties, or by "decree"‡ of a Court

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except "only"‡ where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor

Redemption of portion of mortgaged property

Notes —Under this section of the Act if the mortgagees have acquired in whole or in part the share of a mortgagor, a person interested in a share only of the mortgaged property may redeem his own share 3 C L J 377, 28 A 155, 31 A 335 Under this section, the non payment and non tender of the amount due no the mortgage previous to suit is not a bar to a suit for redemption 24 M 408 The words in s 60, Transfer of Property Act 'at any time after the principal money has become payable' refer to the time agreed on for payment of the mortgage money 2 C P L R 241

Amendment —'The word 'payable' in section 60 at one time gave rise to a diversity of opinion It was held in some cases that when a day was fixed for the payment of the debt secured by a mortgage and nothing more was stated, the presumption was that the day was fixed for the convenience of the debtor and that it was open to the mortgagor if he liked, to pay the debt at an earlier date (I L R 10 All 602) A contrary view was taken in other cases and the general principle that the rights of redemption and foreclosure are co extensive was strictly followed (I L R 5 Bom 22, 29 All. 471) In the last mentioned cases, where the deed provided that the mortgagor should pay 'within . years," the suit brought to redeem the property before the expiry of that period, was held premature There is nothing in law to prevent the parties from stipulating expressly that the mortgagor may discharge the debt within the specified period and take back the property but is an elementary proposition that the mortgagee is not entitled to foreclose before the mortgage money has become due As a corollary to that proposition it is reasonable to hold that a mortgagor also should not be allowed to redeem before the mortgage money has become due

* Added by Act XX of 1929. † Substituted by Act XX of 1929.
‡ Inserted by Act XX of 1929

It is possible that a mortgagee, relying on the condition in a mortgage regarding the period of redemption, may have entered into other transactions which will be affected if the mortgage is redeemed before the period stipulated for redemption foreclosure has expired In *Bakhtawar Begu n* v *Hosaini Khanum* I L R 36 All 19, the Privy Council has approved of the view taken in I L R 29 All 471 that redempt on should not be allowed within the term of the mortgage In order to remove any doubt on this point the word 'due' has been substituted for the word 'payable in the first paragraph

It should be made clear that on redemption a mortgagee is bound to deliver not only the mortgage deed in his possession but all documents in his possession relating to the mortgaged property As it is proposed that hereafter all mortgages should be by registered instruments the words in brackets, *viz* "where the mortgage has been effected by a registered instrument" have become unnecessary and should be omitted

T what is known as the principle of the integrity or indivisibility exists not be generally benefitted thereby, but also with reference to the mortgagor Save as a matter of special arrangement neither the mortgagor nor the mortgagee nor any person claiming through either of them should get relief except in consonance with the principle of indivisibility We do not think it necessary to alter the last paragraph of the section except that the word 'only should be inserted between the words "except and 'where" with a view to get rid of the effect of the decision in 27 Bom L R 1449 The only case, *therefore*, when the integrity of a mortgage may be allowed to be broken, apart from ee acquires a share in the mortgaged

ing order absolute in mortgage suits ler XXXIV in the First Schedule to the sections 60, 67 and 67 A of the principal Act to substitute the word 'decree for the word 'order whenever it occurs as also in sections 32 and 33"—*Report of the Select Committee*

* "60A (1) Where a mortgagor is entitled to redemption then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a retransfer he may require the mortgagee, instead of re transferring the property, to assign the mort property to such third person as the mort shall be bound to assign and transfer

Obligation to transfer to third party instead of re transference to mortgagor

tion of the mortgagor and, as between encumbrancers the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession

* 60B A mortgagor as long as his right of redemption subsists shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from documents of title relating to the mortgaged property which are in the custody or power of the mortgagee."

Right to inspection and production of documents

Notes—' We have added on the lines of sections 95 and 96 of the English Property Act two new sections—60 A and 60 B—to define the obligation of a mortgagee, when so required to transfer the mortgage debt to a third person named by the mortgagor and also to make it clear that a mortgagor has a right to inspect and take copies of the document of title relating to the mortgaged property — *Report of the Select Committee*

* Added by Act XX of 1929.

Right to redeem separately or simultaneously

*"**61.** A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together "

Amendment—"Section 61 abolished the doctrine of the consolidation of mortgages The section was based on section 17 of the Conveyancing Act, 1881, (corresponding to section 93 of the Property Act, 1925) In England before that statute was enacted, and in this country before Act IV of 1882 was passed a mortgagee was allowed to consolidate securities in his hands and force a mortgagor to redeem all of them or to prevent him from redeeming one of them without redeeming the others [Ghose on Mortgage, Vol I, p 429, 5th Edn 6 Bom H C R (A C J) 90] This was inequitable and was altered by section 61 of the Act But even that section is not exhaustive It is proposed, therefore, that a mortgagor should be allowed to redeem simultaneously all debts or any one or more of them which have become due to the same mortgagee The same principle ought to apply where portions of one and the same property are mortgaged separately Accordingly, any reference to "property" has been omitted and the words 'two or more mortgagees" have been used and the illustration has been omitted '—*Report of the Special Committee*

Right of usufructury mortgagor to recover possession

62. In the case of an usufructuary mortgage, the mortgagor has a right to recover possession of the property "together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee '*

(*a*) where the mortgagee is authorized to pay himself the mortgage money from the rents and profits of the property,—when such money is paid ,

(*b*) where the mortgagee is authorized to pay himself from such rents and profits "or any part thereof a part only of the mortgage money— *when the term (if any) prescribed for the payment of the mortgage money has expired, and the mortgagor pays or tenders to the mortgage "the mortgage money or the balance thereof * or deposits into Court as hereinafter provided

Notes—Under ordinary circumstances a mortgagor cannot, before the time limited for payment to the mortgagee expires take proceedings to redeem the mortgagee 26 A 471

Amendment—"Section 62 which relates to an usufructuary mortgage requires to be amended on the same lines as section 58 (*d*)

Clause (*b*) of the section is limited to a case where out of the rents and profits of [illegible]

Scope—"In order to make section 62 comprehensive, we have on the lines of section 60 provided that the mortgagor has a right to require the mortgagee to deliver back the title deeds and other documents relating to mortgaged property'—*Report of the Select Committee*

Accession to mortgaged property

63 Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor upon redemption, shall in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession

* Substituted by Act XX of 1929

Accession acquired in virtue of transferred ownership

Where such accession has been acquired at the expense of the mortgagee and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the *expense of acquiring it If* such separate possession or enjoyment is not possible, the accession must be delivered *with the property* the mortgagor being liable in the case of an acquisition *necessary to* preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper *cost thereof as an addition to* the principal money, ' with interest at the same rate as is payable on the principal *or where no such* rate *is fixed* at the rate of nine per cent per annum *

In the case last mentioned, the profits if any, arising from the accession shall be credited to the mortgagor

Where the mortgage is usufructuary and the accession has been acquired *at the expense of the mortgag-ee*, the profits, if any, arising from the accession *shall, in the absence* of a contract to the contrary, be set off against interest if any, payable on the money so expended

Notes—Large extension into waste adjoining lands could not be regarded as accession to mortgaged property 11 Ind Cas 808 See cases reported in 10 A L J 124, 17 C W N 585, 22 A 83=A W N 1899 189, 14 C P L R 169, 46 B 523, (1922) All 493, 68 Ind Cas 383, 56 Ind Cas 193 A mortgagee who has acquired what any stranger or even the mortgagor himself could have acquired *equally well despite* the mortgage cannot be compelled to hand over his right to the mortgagor 44 Ind Cas 266

Amendment—'Section 63 relates to accession and the second paragraph of the section
where such
mortgagor
to the princip
about any r
silent as to the rate of interest For the words at the same rate the following wo
should be substituted *viz* —

At the rate of interest payable on the principal and where no such rate is *fixed in the* mortgage deed at the rate of nine per cent per annum" —*Report of the Special Committee*

Improvements to mortgaged property

+ 63 A (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved the mortgagor, upon redemption shall, in the absence of a contract to the contrary be entitled to the improvement, and the mortgagor shall not save only in cases provided for in sub section (2), be liable to pay the cost thereof

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor."

Amendment— Section 63 applies to accessions only There is no express provision in the Act allowing a mortgagee to make improvements to the mortgaged

* Substituted by Act XX of 1929
† Inserted by Act XX of 1929 but it has no retrospective effect

property In the absence of such express provision it has been held in some cases that a mortgagee is not entitled to charge or obtain any compensation for improvements made (I L R 19 Mad 3?7, 37 All 81) On the other hand some Courts following the English decisions in *Shephard* v *Jones*, 21 Ch D 469, *Sandon* v *Hooper*, 6 Beav 246, *Henderson* v *Astwood*, (1894) A C 150 have held that a mortgagee should have a charge for improvements if they are reasonable (I L R 43 Bom 69, 45 Bom 1301) According to the English Law, as summarised by Fisher on Mortgage (Art, 1782, 6 h Edn) 'the improvements must always be reasonable having regard to the nature and value of the estate, for, if it were not so, a weapon would be put in the mortgagee's hands with which he might greatly clog the right of redemption, which he has no right to make more expensive than [illegible] protect the [illegible] on Mortgage, [illegible] e mortgagee, [illegible] law is thus expounded (p 1232) —

'Unless the sanction of the mortgagor has been obtained the mortgagee will not be allowed for substantial repairs not being strictly necessary or for improvements, unless the value of the property has been increased thereby Indeed according to some older cases even substantial improvements have been disallowed, unless done with the consent of or acquiescence after notice by the mortgagor A mortgagee can hardly be said to be safe in making improvements in the mortgaged property without such consent or acquiescence But the tendency of later decisions appears to be more favourable to the mortgagee in this respect and it has been laid down that *prima facie*, a mortgagee who has expended money in improvements is entitled to an inquiry whether the outlay has increased the value of the property, and to be allowed such outlay so far as the value is proved to have been increased thereby'

[illegible]

for any improvements unless they are made to preserve the property from destruction or deterioration or unless they are necessary to prevent the security from becoming insufficient or made in compliance with the lawful order of any public servant or public authority We accordingly propose to add a new section 63A dealing with improvements We have throughout guarded the right of private contract —*Report of the Special Committee*

Renewal of mortgaged lease

64 Where the mortgaged property is a lease* and the mortgagee obtains a renewal of the lease the mortgagor upon redemption, shall, in the absence of a contract by him to the contrary have the benefit of the new lease

Notes—The words 'for a term of years" in this section are unnecessary and should be omitted —*Report of the Special Committee*

Implied contrasts by mortgagor

65 In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

(*a*) that the interest which the mortgagor professes to transfer to the mortgagee subsists and that the mortgagor has power to transfer the same,

(*b*) that the mortgagor will defend or, if the mortgagee be in possession of the mortgaged property enable him to defend the mortgagor's title thereto,

(*c*) that the mortgagor will so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property,

(*d*) and, where the mortgaged property is a lease* that the rent payable under the lease, the conditions contained therein and the contracts

* Certain words after this repealed by Act XX of 1929 have been omitted

binding on the lessee, have been paid, performed, and observed, down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists, and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein, and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non payment of the said rent or the non performance of non observance of the said conditions and contracts,

(e) and, when the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will, at the proper time, discharge the principal money due on such prior incumbrance *

The benefit of the contracts mentioned in the section shall be annexed to, and shall go with, the interest of the mortgagee as such, and may be enforced by every person in whom that interest is, for the whole or any part thereof from time to time, vested

Notes.—The implied covenant under this section, for the mortgagor to pay land revenue extends to the purchaser of a property subject to mortgage 17 Ind Cas 878, see also 26 M 385 Where a mortgagee is deprived of a part of the mortgaged property by the act of the mortgagor he is entitled to recover the mortgage money from the mortgagor 54 Ind Cas 785

Amendment—"This section relates to the implied covenants by a mortgagor, and provides in the penultimate paragraph that covenants regarding payment of public charges [illegible] do not apply in the case of a usu [illegible] specified in the section [illegible] on to preserve the mo [illegible] case of a usufructuary [illegible] the mortgagor should not be under a duty to pay the public charges and future rent It appears from the papers underlying the Act that the provision at present contained in this paragraph was first introduced in Bill IV of 1879, when clauses (c) and (d) did not contain the words 'so long [illegible] In the case of a usufructuary mortgage if [illegible] it is as much his duty as it i [illegible] be [illegible] as property on the security of [illegible] the mortgagee was not in possession were added in sub-clauses (c) and (d) of section 65 in the final Bill, but apparently through inadvertence, this paragraph was not omitted" —*Report of the Special Committee*

†[1] 65A (1) Subject to the provisions of sub section (2), a mortgagor, while lawfully in possession of the mortgaged property shall have power to make leases thereof which shall be binding on the mortgagee

Mortgagor's power to lease

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance

(c) No such lease shall contain a covenant for renewal

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case

*Certain words after this repealed by Act XX of 1929 have been omitted
† Substituted by Act XX of 1929, but it has no retrospective effect

exceed three years, and the lease shall contain a convenant for payment of the rent and a condition of re entry on the rent not being paid within a time therein specified

(3) The provisions of sub section (1) apply only if and as far as a contrary intention is not expressed in the mortgage deed, and the provisions of sub section (2) may be varied or extended by the mortgage deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section"

Amendment—In the absence of an express provision in the Act, a question is sometimes raised whether a mortgagor in possession is competent to grant a lease of the mortgaged property during the continuance of the mortgage and whether such a lease is binding on the mortga
Act, 1881, was passed a mortgagor could
mortgagee [*Keech* v *Hall*, 1 Smith L C
D 678, *Robins* v *Whyte*, (1906) 1 K B
of an English mortgage in Bombay (I L R 30 Bom 250) and it was observed as follows —

If a mortgagor left in possession grants a lease without the concurrence of the mortgagee the lessee has a precarious title inasmuch as although the lease is good as between himself and the mortgagor who granted it the paramount title of the mortgagee may be asserted against both of them

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long as

mortgagee the mortgagor cannot grant
mortgagee (2 A L J 264) This view
J 500, following the observations in Ghose on Mortgage (Vol I p 283) it was held that a mortgagor may make a lease conformable to usage and in the ordinary course of management, and the tenancy so created will be binding on the mortgagee The

conditions in the mortgage deed be entitled to grant a lease of the mortgaged property In order however, to protect the interests of the mortgagee we propose to provide certain restrictions mostly taken from section 99 of the Law of Property Act, 1925, with variations suitable to the conditions of the country —*Report of the Special Committee*

66 A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate, but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient, or will be rendered insufficient by such act

Waste by mortgagor in possession

the meaning of this section,
consisting
re on the
mortgage

Notes—The principles of law embodied in this section being in consonance with the principles of equity good conscience and justice should be adopted by Courts in the Punjab when giving a decision on matters which are dealt with this section, though this Act is not in force in the Punjab 124 P L R 1912 W
property is destroyed six years' delay is fatal 7 A L J 391

Rights and Liabilities of Mortgagee

67 In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage money has become "due"* to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage money has been paid or deposited as ... he Court "a decree"* that th... ht to redeem the property or "...

Right to foreclosure or sale

A suit to obtain "a decree"* that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure

Nothing in this section shall be deemed—

*"(*a*) to authorise any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale, or,"

(*b*) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure,

(*c*) to authorize the mortgagee of a railway, canal or other work, in the maintenance of which the public are interested, to institute a suit for foreclosure or sale, or

(*d*) to authorize a person interested in part only of the mortgage money to institute a suit relating only to a corresponding part of the mortgaged property unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage

Notes—One of the se... cannot sue to recover his share A W N. 1892, 246 A mortgag... suit only for a money decre... possession under a simpl... until a regular suit has been brought against him under this section 1 Ind Cas 227

Amendment—For the reasons stated in the notes under section 60, the word 'payable' should be replaced by the word 'due' ... open to a mortgagee

India have been empowered, when a suit is brought for foreclosure to direct a sale in lieu of foreclosure The discretion conferred by that rule on the Courts has been exercised in different ways, some Courts refusing foreclosure, while others have granted it We understand that in Allahabad foreclosure decrees are more frequent As to equitable mortgages by deposit of title deeds also, a different practice prevails in different Courts In Calcutta and Allahabad the Courts have invariably refused foreclosure in such cases (24 Cal 348, 14 All 238), while in Bombay foreclosure decrees are sometimes passed (14 Bom 269)

The question is discussed by the late Sir Rash Behari Ghose in the 5th Edition of his Law on Mortgage, at p 32, where he says —

"But although sales take place more frequently now foreclosure is still a common method of working out of the rights of mortgagees in England I may, however, be permitted to observe that in complicated cases, the rights of the parties can be adequately protected only by a decree for sale, foreclosure being both a cumbrous and dilatory method of procedure When the Transfer of Property Act, 1882, was under consideration, it was proposed in this country to do away with foreclosure altogether and to give the mortgagee only the right to realise his security by a sale of the pledge But it was thought by the then Law Member of the Governor General's Council that the amount of simplicity which would be thus gained would not justify the amount of disturbance which would be created by such a change in the law. I, however, venture to doubt whether

* Substituted by Act XX of 1929

appropriate remedy on a mortgage The same practice is followed in countries which have adopted the Roman Law as the basis of their jurisprudence In English law, however, the more cumbrous mode of proceeding has stood its ground down to the present day, but it may be affirmed without much temerity that foreclosure with its successive periods of redemption, its liability to be re opened and the manifest inadequacy of the remedy in complicated cases, is doomed even in England"

In Wiltsie on Mortgage Foreclosure Vol I p 5 3rd Edn (an American work), it is observed —

"Strict foreclosure or foreclosure without a sale was a procedure greatly used in England at one time and its purpose was to perfect in the mortgagee an absolute title, instead of to obtain a decree for sale, the Courts in most States recognise this method but allow its use only in exceptional cases, owing to its severity upon the rights of the owner of the equity of redemption'

We, therefore, consider it desirable to confine the remedy of foreclosure to the case of a mortgage by conditional sale or an anomalous mortgage where, by the express terms of the deed, the parties have stipulated for foreclosure, and to disallow it in all other cases"

*"**67A** A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67 and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage money has become due"

Mortgagee when bound to bring one suit on several mortgages

Ame ... d out that it is inequitable to ... to the prejudice of a mortgag ... ges in respect of the same or ... gagor if the mortgagee is allowed to enforce one mortgage and keep the other mortgages alive In the case of a number of mortgages in which the only remedy open is foreclosure, the disadvantage of the mortgagor will be very marked as he may lose the whole property in satisfaction of one debt which may be less than the real value of the property and will be liable to have a personal decree passed against him in satisfaction of debts under the other mortgages In the case of mortgages too where the only remedy is sale, the property will never realize its fair and proper value if it be sold subject to another mortgage Thus in 25 C W N 129, where the Calcutta High Court was constrained to hold that the holder of two independent mortgages over the same property, in the absence of a contract to the contrary, was not prevented from obtaining a decree for sale on each of them in a separate suit, it had to add a reservation in the decree that he could not sell the property twice over nor could he sell it under either of the decrees subject to the other In that case the Court held that the right course to follow in such circumstances was to direct that the property be sold free of both charges whether in execution of the decree on the first mortgage or of the decree on the second mortgage and that the balance of the sale proceeds, ... the first ... if any ... although ... Code of ... on to be

* Added by Act XX of 1929 This section has no retrospective operation, see section 63 of Act XX of 1929.

Right to sue for mortgage money

*"68. (1) The mortgagee has a right to sue for the mortgage money in the following cases and in no others, namely —

(a) where the mortgagor binds himself to repay the same ;

(b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so ,

(c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of, the mortgagor ,

(d) where th ... n of the mortgaged ... to secure the posse- ... or any person claiming under a title superior to that of the mortgagor :

Provided that, in the case referred to in clause (a) a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1) the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, retransfers the mortgaged property "

Amendment ... mortgagee ... ecover the ... e circums- ... —

(i) when the mortgagor binds himself personally to repay the debt,

(ii) when the mortgage security is wholly or partially destroyed or rendered insufficient in consequence of any cause other than the wrongful act or default of the morgagor or mortgagee,

(iii) when the mortgagee is deprived of his security by or in consequence of the wrongful act or default of the mortgagor

(iv) where the mortgagee, being entitled to possession the mortgagor fails to deliver possession of the mortgaged property or to secure to him the undisturbed possession thereof

The cases mentioned in clauses (i), (iii) and (iv) are referred to in clauses (a) to (c) of the present section while that mentioned in clause (ii) is contained in the last paragraph

But section 68, as it stands at present, deals not only with the cases in which a mortgagee is entitled to sue for the mortgage money, it also indicates to some extent the persons against whom the suit may be maintained The opening words of the section are "The mortgagee has a right *to sue the mortgagor* for the mortgage money' We propose to omit the words 'the mortgagor" The reason is that the use ... hether the words 'the mortgagor' ... include his legal representatives or ... A 7) As to causes (i) being ... to repay the sum no question can arise as to the liabilities of the legal representatives of the mortgagor or his transferees the word 'himself' in that clause clearly indicates that none but the mortgagor can be sued for the mortgage money in that case

*Substituted by Act XX of 1929.

As regards clauses (ii), (iii) and (iv) the legal representative of the mortgagor or his [illegible] in others [illegible] he different [illegible] and trans [illegible] onsidered it desirable to leave these matters alone as we think that the question in each case should be decided by the general law

Clause (c) of the present section provides that the mortgagor is personally liable when he fails to deliver or to secure to the mortgagee the possession of the property without disturbance by him or other person The words "any other person" are very wide and might include a trespasser The disturbance of the mortgagee's possession by a trespasser or by a third person with whom the mortgagor was not in collusion should not confer upon the mortgagee a right to sue the mortgagor for the mortgage money The words 'or any other person' have been held to mean a person claiming under a title superior to that of the mortgagor (I L R 15 Mad 304, 19 All 191, 42 Mad 578) In clause (iv) above we propose to substitute for the words "any other person" the words 'any person claiming under a title superior to that of the mortgagor."

The personal remedy declared by the section is additional and it has been held that it can be pursued by the mortgagee concurrently with his other remedies or [illegible] or security (17 Mad 469) [illegible] loan (I L R 41 Cal 388 [illegible] this concurrent remedy has [illegible] view to get an increase of interest or other undue advantage by the threat of arrest and imprisonment may obtain a money decree without proceeding against the property We therefore, propose that in the cases mentioned in clause (i) and clause (ii) the mortgagee should exhaust all his available remedies against the mortgaged property before he seeks to pursue the personal remedy against the mortgagor In cases falling under clauses (iii) and (iv) above such a restriction on the rights of a mortgagee is not called for The proposed provision will not be inconsistent with Order XXXIV, rule 6 of the Code of Civil Procedure, 1908, under which in a mortgage suit the mortgagee is not entitled to execute the decree personally against the mortgagor till the mortgaged property has been sold and the sale proceeds are found insufficient to pay off the entire mortgage-debt

[illegible] or relinquish [illegible] nd clause (ii) [illegible] e should not, [illegible] to increase the burden on the remaining portion (I L R 50 Cal 718) In order to ensure that the relinquishment of the security is complete, it is proposed that it should be made by a registered instrument

In the case mentioned in clause (i) above, the cause of action to sue for a personal decree will arise on the date fixed for repayment In other cases the cause of action is accelerated and the mortgagee need not wait till the due date has arrived (I L R 25 Cal 450, 15 Mad 1474, 16 All 318, 26 Bom 241) The period of li[illegible] document be registered [illegible] 389, 12 I A 12, 34 All. [illegible] nst property A suit for [illegible] ve to be instituted earlier than the mortgage suit In order that such a suit may not be barred by limitation, or struck off for non prosecution we propose to provide that it should be stayed till the mortgagee exhausts his remedies against the mortgaged property

The amendment of section 68 does not necessitate the amendment of Order XXXIV, rule 6, Code of Civil Procedure, 1908 The rule applies to a mortgage suit and has no application to a suit under this section in which the only decree that can be passed is for the payment of money (I L R 29 Mad 362)

So also no amendment of rule 14 of Order XXXIV is necessary In cases where the mortgagee is required to exhaust his remedies against the mortgaged property, the property would be sold before he is allowed to exercise his right for a personal decree against the mortgagor and the provisions of rule 14 will not come into operation That rule can only apply to other cases where he is not required to proceed against the mortgaged property first

In cases in which the mortgage money is agreed to be paid by instalments or the interest is to be periodically paid it has been held that a sufficient portion of the mortgaged property may be brought to sale for the amount due These cases are governed by the express terms of mortgaged deed (I L R 35 Bom 327, 43 Mad 613) and are not affected by section 68"—*Report of the Special Committee*

Proviso to clause (d) —"As under section 21, unless otherwise expressly provided the term mortgagor will include persons claiming title from him we have added poviso to make it clear that such persons are not included in that term as used in clause (a) of sub section (1) of section 68"—*Report of the Select Committee*

Sub section (2) —Instead of making it obligatory on a Court to stay a suit or proceeding brought for the enforcement of the personal remedy until the mortgagee has exhausted his remedies against the [illegible]
(2) of section 68, preferred to leave [illegible]
or proceeding We see no reason [illegible]
gagee is abandoning the security a [illegible]

to the mortgagor, if required to do

69 (1) *'Notwithstanding anything contained in the Trustees and Mortgagees Powers Act, 1866 a mortgagee, or any person acting on his behalf, shall subject to the provisions of this section have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage money, without the intervention of the Court, in the following cases and in no others, namely —

Power of sale when valid

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu Muhammadan or Buddhist, 'or a member of any other race, sect, tribe or class, from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor General in Council in the local official Gazette ,"†

(*b*) where 'a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage deed and ‡ the mortgagee is the Secretary of State for India in Council ,

(*c*) where 'a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed, and ‡ the mortgaged property or any part thereof 'was on the date of the execution of the mortgage deed' [illegible] utta Madras, Bombay, Karachi Rangoon " [illegible] in any other town" or area ‖ which the Go[illegible] Council may, by notification in the *Gazette of India* specify in this behalf '

(2) ** No such power shall be exercised unless and until—

(*a*) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service , or

(*b*) some interest under the mortgage amounting at least to five hundred rupees, is in arrear, and unpaid for three months after becoming due

(3) When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had

* Inserted by Act XX of 1929
† Inserted by Act III of 1885
‡ Added by Act XX of 1929
[illegible]
[illegible] of 1915

arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised, but any person damnified by an unauthorized, or improper or irregular exercise of the power, shall have his remedy in damages against the person exercising the power

(4) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances (if any), to which the sale is not made subject, or after payment into Court, under section 57, of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale, and, secondly, in discharge of the mortgage money and costs and other money (if any) due under the mortgage, and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorized to give receipts for the proceeds of the sale thereof

(5) "Nothing in this section or the section 69A applies to powers conferred before the first day of July, 1882"*

Notes—The provisions of the second paragraph of this section are applicable to a deprecatory condition, and are by no means confined to defects in the circumstances which serve as the occasion for sale 6 Bom L R 557 It is not competent to a mortgagee who has given a notice under this section, demanding principal and interest and for a sale in default of payment to exercise a power of sale for interest in arrears before the expiry of three months from the service of that notice [illegible]

gagee selling the mortgaged [illegible]
plus sale proceeds in trust for the mortgagor [illegible]

[illegible] 69 refer to English
mor[illegible] which contains an
exp[illegible] ich does not conta[illegible]
in a [illegible] in clause (1), the power of sale is to be exercised in accordance with the procedure prescribed in paragraphs 2 to 4 of the section, whereas in the case of those in the last [illegible] id Mortgage [illegible] in section 69 [illegible] s Act XXVIII [illegible] which was re[illegible] 19 to 22 of the latter Statute relate to the exercise of the power of sale by a mortgagee and are now reproduced in sections 101 to 108 of the Property Act, 1925 (15 & 16 Geo V, c 20) The provisions of Lord Cranworth's Act were as pointed out by Fisher on Mortgage (paragraph 975, 6th Edn) open to the following defects —

[illegible] the interest on the mortgage be payable half yearly, it seems that the repealed statutory power cannot be exercised till at least eighteen months have expired from the date of the security The interest must have been in arrear for six months and six months' notice must have been given, and in the absence of a provision that the notice may be given before the interest has actually fallen into arrear for six months, and exercise of the power depending upon such a notice could hardly be considered safe

Again, the purchaser's title is protected only where no case has arisen to authorise the exercise of the power and where no notice has been given The Act is silent as to an improper exercise of the power after it has been arisen, and which is irregular otherwise than by the absence of notice, nor does it

* By Act XX of 1929 the paras have been re numbered and para (5) has been added and certain words after para (5) have been omitted

protect the purchaser where he is aware of the absence of notice, or of other irregularities, and it gives the person damnified an express remedy in damages only where the exercise of the power was unauthorised · but none where being authorised it was improperly exercised either for want of notice or otherwise"

These defects are also present in the Indian Act (*cf* sections 6 to 9 of Act XXVIII ... Conveyancing
... ty Act, 1925
Conveyancing
edure in Act
ealed, should
be revised

to the appointment of a receiver referred to in the last paragraph of the section should be the subject of a separate section

As the Trustees' and Mortgagees' Powers Act, 1866, deals with other matters, such as trusts and leases, besides mortgages, it should not be repealed in order, however, to make it clear that the Act will no longer apply to mortgages, we propose that the words "Notwithstanding anything contained in the Trustees' and Mortgagees' Powers Act, 1866, should be inserted at the beginning of section 69

We also consider that in all cases where the mortgagee is entitled to exercise the powers of sale under section 69 it is desirable to make provision for the appointment of a receiver We propose that a new section (section 69 A) should be added on the lines of sections 101 (*iii*) and 109 of the English Property Act, 1925, providing for the appointment of a receiver, the rights and liabilities of such receiver and the procedure to be followed when such appointment is made At the same time, we think it desirable that specific provision should be made under section 69A for the following —

(*a*) unless otherwise provided by the terms of the mortgage deed the receiver should be appointed by the consent of both the mortgagor and the mortgagee,

(*b*) where the parties do not agree regarding the person to be appointed as a receiver they should have liberty to apply to the Court in a summary proceeding

We also think it desirable to make provision in the section on the lines of section 34 of the Indian Trusts Act, 1882, enabling the parties or the receiver to apply in a summary proceeding to the Court for its opinion or advice or for directions in matters connected with the management or administration of the mortgaged property

*[1] **69A** (1) A mortgagee having the right to exercise a power of sale under section 69 shall, subject to the provisions of sub section (2), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

Appointment of receiver

(2) Any person who has been named in the mortgage deed and is willing and able to act as receiver may be appointed by the mortgagee

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose ... agreement, the mortgagee shall ... pointment of a receiver, and any ... to have been duly appointed by the mortgagee

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the Court on application made by either party and on due cause shown

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub section

* Inserted by Act XX of 1929

(3) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor, and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides or unless such acts or defaults are due to the improper intervention of the mortgagee

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section

be concerned to in-

money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five percent. on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and keep insured against loss or damage by fire out of the money received by him, the mortgaged property or any part thereof being of a insurable nature

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely —

(*i*) in discharge of all rents, taxes, land revenue, rates and out goings whatever affecting the mortgaged property,

(*ii*) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver,

(*iii*) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee,

(*iv*) in payment of the interest falling due under the mortgage,

(*v*) in or towards discharge of the principal money, if so directed in writing by the mortgagee,

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed a receiver, or who is otherwise entitled to the mortgaged property

(9) The provisions of sub section (1) apply only if and as far as a contrary intention is not expressed in the mortgage de d, and the provisions of sub sections (3) to (8) inclusive may be varied or extended by the mortgage-deed, and as, so varied or extended shall, as far as may be, operate in like manner and with all the like incidents effects and consequences, as if such variations or extensions were contained in the said sub-sections

(10) Application may be made, without the institution of a suit, to the Court for its opinion advice or direction, on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal A copy of such application shall be served upon, and the hearing thereof may be attended by such of the persons interested in the application as the Court may think fit

The cost of every application under this sub-section shall be in the discretion of the Court

(11) In this section, "the Court"* means the Court which would have jurisdiction in a suit to enforce the mortgage "

Notes —' In clause (3) of sub section (1) of section 69 we have made it clear that the liability of a mortgagor for the acts or defaults of a receiver is removed if such acts or defaults are due to improper intervention of the mortgagee "—*Report of the Select Committee*

Accession to mortgaged property

70 If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession

Illustrations

(*a*) A mortgages to B a certain field bordering on a river The field is increased by alluvion For the purpos...

(*b*) A mortgages a certa... on the plot For the purpos... the plot

Notes —A mortgagee has a lien on the house built on the mortgaged premises after the pulling down of the old house 1 C P L R 38 For the purpose of this ... hold property 30 B 250 ... house carries out repairs ... rent he ought to have ... him brings about 54 Ind Cas 112

Renewal of mortgaged lease

71. When the mortgaged property is a lease† and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security be entitled to the new lease †

Rights of mortgagee in possession

72 "A mortgagee"‡ may spend such money as in necessary†—

(*b*) for "the preservation of the mortgaged property"† from destruction, forfeiture, or sale ,

(*c*) for supporting the mortgagor's title to the property ,

(*d*) for making his own title thereto good against the mortgagor , and,

(*e*) when the mortgaged property is a renewable leasehold, for the renewal of the lease ,

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent per annum

"Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title ' §

Where the property is, by its nature, insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property , and the premiums paid for any such insurance shall be ' added to the principal money with interest at the same rate as is payable on the principal money, or where no such rate is fixed, at the rate of nine per cent per annum ' But the amount of such ... in this behalf in the mortgage ... two thirds of the amount that ... reinstate the property insured

* Inserted by Act (III of 1885), s 5
† Certain words after this repealed by Act XX of 1929 have been omitted
‡ Substituted by Act XX of 1929 § Inserted by Act XX of 1929

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure

Notes—The provisions of this section are not exhaustive 31 C. 97 Under this section, a mortgagee is entitled to add, in the absence of a contract to the contrary, sums spent by him for making his title thereto good against the mortgagor 28 B 181=5 Bom L R 916; 27 A 403; 1 C P. L R 66; see 20 A 401; 67 Ind Cas 132 The rules contained in this section only reproduce the doctrines which the Courts of Justice in India have uniformly adopted 10 A 611=A W N 1888, 238 The provisions of this section are only permissive 34 M. L J 177.

Amendment—"It is inequitable to confine this section to a mortgagee in possession With the exception of the provision in clause (*a*) relating to the management of the property and the collection of rents and profits, this section may apply [illegible]

who is not in possession spends money to preserve the property from forfeiture or sale he is entitled to be reimbursed for the money spent (I L. R 30 Cal 794) In a Bombay case it was recently held (25 Bom L R 843) that section 72 did not imply that a mortgagee not in possession had no right to charge the mortgaged property for payments properly made by him in relation to his security Whether a mortgagee is in possession or not, it is to his interest to spend money to preserve his security, and he should have a right to do so We therefore, propose that a mortgagee, though not in possession should be entitled to spend such money as may be necessary for purposes mentioned in clauses (*b*), (*c*), (*d*) and (*e*) subject to the condition as to (*b*) and (*c*) that he should not be entitled to do so until the mortgagor is in default

We also propose to omit the words in the first paragraph of the section, namely, "during the continuance of the mortgage" These words had to be in the original section as the section was confined to a mortgagee in possession Further, as we propose to amend Order XXXIV of the Code of Civil Procedure, 1908, so as to entitle the mortgagor to redeem at any time before the sale is confirmed or the foreclosure takes place under the provision of the Code, these words have to be omitted in order that a mortgagee may be entitled, if occasion arises to spend such money as may be necessary for these purposes until the sale is confirmed or a final decree for foreclosure is passed

By the omission of clause (*a*) from section 72, we do not propose to take away the right of a mortgagee in possession to spend money or the management of the property or collection of the rents and profits As section 76 relates to a mortgagee in possession, we propose to make provision in that section for the recognition of the right

In the penultimate p [illegible] surance premium shall [illegible] paragraph provides that [illegible] the principal money It [illegible] between insurance premia [illegible] for insurance ought to be treated on the same footing as those spent for necessary costs and charges We are therefore of opinion that such sums should be added to the principal money and should carry the same rate of interest"—*Report of the Select Committee*

* "73 (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law

Right to proceeds of revenue sale of compensation on acquisition

* Substituted by Act XX of 1929

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894,* or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of the amount due to the mortgagor as compensation

(3) Such claims shall prevail against all other claims except those of prior encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage has not become due"

Amendment—The present section de [illegible]
gaged property is sold for the arrears of
decisions on the point whether the princip
case where the mortgaged property is cor
Acquisition Act, 1894 In I L R 16 All 7
a mortgagee had no charge on the amour
acquisition of the mortgaged property under the Land Acquisition Act and that the mortgagee ought to have claimed apportionment in acquisition proceedings A contrary view was taken in I L. R 6 Mad 341 and the Allahabad decision was dissented from in Calcutta and Patna (13 C W N 350, 5 Pat L J 650) It has been held that the compulsory acquisition of a property does not amount to its destruction within the meaning of section 68 and that the property acquired is converted into money (I L R 13 Mad 321) According to the general principle of conversion on which section 73 is based the amount awarded as compensation is impressed with the charge to which the land is subject In England where money is paid into Court as the proceeds of real estate converted by compulsory powers under Acts of Parliament as under section 69 of the Land Clauses Consolidation Act it usually remains in Court subject to the rights of the parties interested in it to have it reinvested in land and it is considered to be impressed with the quality of real estate (*In re Stewart* 1 Sm and G 32 I W & T L C 393 8th Edn) The view taken by the majority of the High Courts is in accordance with the general principle stated above, and we propose to give effect to it by the addition of sub section (2) to section 73

Section 73 at present provides that a mortgagee has merely a charge on the surplus sale proceeds The use of the word "charge' appears to us to be [illegible]
unhappy inasmuch as a charge
and is enforced as a simple m
mortgage obviously does not a
The use of the word also leav
therefore propose to avoid its
entitled to claim payment out
to the mortgagor as the case
provided for priorities as in the case of a
converted into money we see no reason
until the due date particularly when he
mortgage"—*Report of the Special Committee*

74 *Right of subsequent mortgagee to pay off prior mortgagee—Repealed by Act XX of 1929*

75 *Rights of mesne mortgagee against prior and subsequent mortgagees—Repealed by Act XX of 1929*

Liabilities of mortgagee in possession

76 When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(*a*) he must manage the property as a person of ordinary prudence would manage it, if it were his own,

(*b*) he must use his best endeavours to collect the rents and profits thereof,

(*c*) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other

* Act I of 1894

charges of a public nature "and all rents"* accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold,

(*d*) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (*c*) and the interest on the principal money,

(*e*) he must not commit any act which is destructive or permanently injurious to the property,

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money,

(*g*) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee and, at any time, during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported,

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation rent in respect thereof, shall, after deducting the expenses "properly incurred for the management of the property and the collection of rents and profits and the other expenses"* mentioned in clauses (*c*) and (*d*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest † and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage money, the surplus (if any) shall be paid to the mortgagor,

(*i*) when the mortgagor tenders or deposits in manner hereinafter provided the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his receipts from the mortgaged property from the date of the tender, or from the earliest time when he could take such amount out of Court, as the case may be "and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property" ‡

Loss occasioned by his default

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss (if any) occasioned by such failure

Notes —A mortgagee can sue for mortgaged property 16A 386 This section does not apply where the mortgage has in fact become extinct 47 Ind Cas 224 This section is not in terms restricted to a mortgagee who takes possession as mortgagee, the principle would apply to all mortgagees who get into possession by way of further security for payment of their debts A I R 1927 Mad 964

Clause (c) —Mortgagee is liable to pay enhanced Government revenue 5 M L T 284, 17 M L J 518, 68 Ind Cas 549

Clause (g) —He must account for profits A W N 1887, 247 If the mortgagee refuses to account the Court may decide on it 36 Ind Cas 598

Clause (h) —Where a mortgagee in possession cultivates the mortgaged land or part of it he may be charged with the net profits of his cultivation for a fair oc

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* The words within quotations have been inserted by Act XX of 1929
† Certain words after this repealed by Act XX of 1929 have been omitted
‡ Inserted by Act XX of 1929

cupation rent as under the circumstances of the case may seem just 6 N L R 109=7 Ind Cas 541

In places where this Act is not extended—There is no rule of abstract justice in taking the accounts of a mortgagee in possession and the Indian rule embodied in this section, should, though the Act has not been extended to Burma, be followed there in preference to the English practice 26 C 1 (P C)=25 I A 241

Amendment—In clause (e) of section 76 it is provided that the mortgagee in possession shall be liable for the payment of Government revenue, other public charges and arrears of rent If the mortgaged property is leasehold, it is also his duty to pay any rent which may become due during the period of the lease We propose therefore to insert in clause (d) the words "and all rent after the words "charges of a public nature'

In clause (b) and (d) of the section the term 'rents and profits" is used, while in clause (c) the word "income" is used In clauses (h) and (i) and also in section 77, the word 'receipts" is used In our opinion the use of these different terms is appropriate in regard to the context in which they are used and they are in contra distinction to one another, Government revenue, public charges and rent are always paramount charges on immovable property, and the failure to pay them renders the property liable to be sold The liability of a person in occupation of the property including a mortgagee in possession is commensurate with his right to enjoy the income of the property In clause (c) therefore, it is provided that, in the absence of a contract to the contrary, it is the primary duty of a mortgagee in possession to pay the aforesaid dues out of whatever income he may realise from the property He cannot claim any deduction until those liabilities are satisfied In clause (d) however, the term "rent and profits' is used to indicate that a mortgagee is liable to make necessary repairs to the property out of the balance of the actual realisations from the property after deducting therefrom the payments mentioned in [illegible]

[illegible]

d accurate account of 'all sums received Clause (h) provides how to balance of the sums received by a mortgagee after deducting outgoing mentioned therein is to be debited towards the payment of the mortgage money The clause uses the term, 'receipts" and shows that they are to be actual and gross realisations In clause (i) the words "gross receipts' are used This phrase was quite appropriate with regard to the fact that no provision was made in clause (h) for deducting expe [illegible] of the property or the collection of the rents an [illegible] made in clause (h), it is unnecessary to [illegible] same has been accordingly omitted

The words 'on the mortgage money" after the words 'on accounts of interest' in clause (h) are ambiguous As defined in section 58 the words "mortgage money' includes both principal and inter [illegible] des for the payment of simple interest only, t [illegible] ght [illegible] ey" indicate compound interest In [illegible] or should be omitted The word [illegible] or ding to the terms of a particular compound as the case may be

In section 72 we have proposed the omission of clause (a) which relates to a right of a mortgagee to spend money for the management of the mortgaged property and the collection of rents and profits In our opinion the inclusion of the clause in that section was not appropriate, particularly as money spent for the purposes mentioned therein is to be added to the principal We do not think that money spent for management of the property or the collection of rents and profits should be treated as an accretion to the principal In our opinion, as in the case of payment mentioned in clauses (c) and (d) of section 76, money spent for management or [illegible] be treated as outgoings [*See* Ghose on [illegible] ngland such expenses are treated as 'just [illegible] p 1976) We therefore propose to provide [illegible] of management and collection of rents [illegible] receipts of the mortgagee in possession

along with other outgoings mentioned therein We thereby also give effect to the right of a mortgagee in possession to incur such expenses A right to recover such money accrues to him only in making deduction from the receipts, while taking accounts under clause (*h*)

In spite of the provisions in clause (*i*) that after the tender or deposit by the mortgagor, the mortgagee must account for his receipts or gross realisations, it has been held in I L. R 47 Mad p 7, that it was open to a morrgagee to deduct any sum which he may have properly incurred in respect of the mortgaged property even after such tender or deposit In our opinion the view is not correct After the amount due in respect of the mortgage has been properly tendered or deposited in Court, it should not be open to a mortgagee to add any sum to the mortgage-money We, therefore, propose to provide in clause (*i*) that a mortgagee shall not be entitled to deduct any amount from the receipts on account of any expenses incurred after the date of the tender or deposit

[illegible] *Hopkinson* [illegible] the first [illegible] ter notice [illegible] is based [illegible] make any further [illegible] performance of such [illegible] 42] He should not [illegible] of his advance to [illegible] his security on the property as it exists On the other hand as pointed out by Lord Cranworth mortgages are but contracts and, when once the rights of parties under them are defined and understood, it is impossible to say that any rule regulating their priority is unjust His Lordship observed "if the law is once laid down and understood, that a person advancing money on a second mortgage, with notice of a prior mortgage covering future as well as present debts will be postponed to the first mortgagee, to the whole extent covered or capable of being covered by the prior security, he has nothing to complain of"

In their report dated 20th May, 1870, the Law Commissioners observed that the dissenting view of Lord Cranworth in *Hopkinson* v *Rolt*, was more just than the view [illegible] the majority view prevailed in Eng [illegible] (1899) 1 Ch 132], but in 1924 the [illegible] prior mortgagee may tack further [illegible] rity to subsequent incumbrances in [illegible]

(i) if further advances are made by arrangement with subsequent mortgagees to that effect,

(ii) if they are made without notice of the subsequent mortgages,

(iii) if they are made in pursuance of an obligation covenanted in the prior mortgage, it being immaterial whether at that time the prior mortgagee had or had not notice of subsequent mortgages

These provisions are reproduced in section 94 of the Property Act 1925 In our opinion therefore the section does not require amendment —*Report of the Special Committee*

Receipts in lieu of interest

77 Nothing in section 76, clauses (*b*), (*d*) (*g*) and (*h*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property, shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal

Notes—In the absence of an express stipulation therefor, an usufructuary mortgagee is not liable to render account to the representatives of the mortgagor in an action for redemption The fact that the rents of the property are to be appropriated in lieu of a portion of the interest only cannot alter the usufructuary character of the mortgage 7 A L J 787=7 Ind Cas 293 This section protects the

usufructuary mortgagee's receiving rents and profits in lieu of interest as also such usufructuary mortgagees as are receiving the rents and profits partly in lieu of *interest and partly in lieu of the mortgage money* 22 C L J 434=52 Ind Cas 59

Priority

78 Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee

Postponement of prior mortgagee

refuse to postpone umbrance merely on of fraud The word he light of the Eng or nearly four years gives no reasonable gross neglect within 12 M 429, 12 M

424 The mere registration of a mortgage deed does not affect a subsequent mort him from claiming orted in 2 C W N J 499=3 M L T title deeds would not amount to gross negligence

79 If a mortgage, made to secure future advances, the performance of an engagement, or the balance of a running account expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage

Mortgage to secure uncertain amount when maximum is expressed

Illustration

A mortgages Sultanpur to his bankers, B & Co to secure the balance of his account with them to the extent of Rs 10 000 A then mortgages Sultanpur to C *to secure Rs* 10 000 C, having notice of the mortgage to B & Co, and C gives notice to B & Co, of the second mortgage At the date of the second mortgage *the balance due to B & Co*, does not exceed Rs 5,000 B & Co, subsequently advance to A sums making the balance of the account against him exceed the sum of Rs 10 000 B & Co are entitled to the extent of Rs 10,000 to priority over C

Notes—Under this section two elements have to be considered; first, whether the subsequent mortgagee took with notice of the prior mortgage and secondly whether the prior mortgage expresses the maximum sum secured thereby 16 C L n respect of that advance, the rule is subject to an if the prior mortgage is postponed in respect of advance subsequently made on the security of that mortgage provided it expresses the maximum to be secured thereby and that maximum is not exceeded 16 C L J 394 An undertaking by a mortgagor who takes a fresh advance that he will not redeem the mortgage until he has repaid the advance is legal ge on the land 9 O L J 484 ent in a partition deed creates a 282

S 80 *Tacking abolished—Repealed by Act XX of 1929*

Marshalling and contribution

"*81. If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties."

Marshalling securities

Notes—Section 81 deals with the marshalling of securities It appears from the proceedings underlying Act IV of 1882 that the section is based on the following passage in Fisher on Mortgage (Art 1356, p 694 6th Edn) —

'If the owner of two estates mortgaged them both to one person, and then one of them to another without notice the second mortgagee may insist under the doctrine of marshalling, but without interfering with the rights of the former, that the debt of the first shall be satisfied out of the estate not mortgaged to the second *so far as that shall extend*"

Like section 56 this section provides for marshalling when there are "two properties only ' It is also restricted to a case when the second mortgagee intends to marshal the securities It does not provide for the case of more than two properties not for the case where the property has been mortgaged more than twice and a mortgagee subsequent to the second mortgagee desires to marshal the prior securities We propose to widen the scope of the section by providing that it should apply to cases where there are more than two properties and to all subsequent mortgagees generally

The section also requires that, in order that a subsequent mortgagee should be entitled to have the securities marshalled, it must be shown that he had no notice of the prior mortgage (I L R 23 Cal 790) This condition appears to have been ... *of* (9 Atk ... In *Gibson* ... halling was ... otice of the ... 3] In India also in cases where the Transfer of Property Act, 1882, did not apply, it was held that a subsequent mortgagee could marshal the securities even though he had notice of the prior mortgagee (I L R 18 Bom 160, 22 Bom 304) As stated in the leading case of *Aldrich* v *Cooper*, (1 W and T L C at p 38) the principle of "marshalling" is that it shall not depend upon the will of one creditor to disappoint ...

propose that the words 'who has not notice of the former mortgage should be omitted

It is well established that, in order that the doctrine of "marshalling' can be applied, there must be two funds or securities, both originally the property of the same owner, and the debts must be the debts of the same person [*Exparte Kendall* (1811) 17 Ves 520 I W & T L C 46, Halsbury's Laws of England Vol 21, p 304] Neither in England nor in this country has the doctrine been extended to a case where only a portion of the property already mortgaged is subsequently sold or mortgaged If the prior mortgagee is forced to have recourse to a portion of the ... ney, it may be that both he and the ... property in portions will not realise ... sider that it will be safe to extend

*Section 81 has been inserted by Act XX of 1929

We propose to omit the word valuable' before the word 'consideration in the concluding portion of the section The Indian Law does not recognise any distinction between good and valuable consideration (*see* section 25 of the Indian Contract Act, Pollock and Mulla s Contract Act, p 34) —*Report of the Special Committee*

Contribution to mortgage debt

82 Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after de duction of the amount of any other mortgage or charge to which it may have been subject on that date' *

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid

Nothing in this section applies to a property liable under section 81 to the claim of the "subsequent † mor gagee

Notes—Th s section defines the relation of the mortgagors *inter se* 20 Bom L R 175 Where of two properties belonging to the same person one is mortgaged [illegible] mortgaged to secure another debt for the pur [illegible] respective properties in regard to the subse- [illegible] two properties must be taken into account and [illegible] n the earl er mortgages out of the value of the property comprised in the subsequent mortgage Where the amouut due upon the earlier mortgage exceeds the value of the property comprised in that mortgage the necessary result is that the whole of the amount of the second mortgage is recoverable from the other property comprised in the latter mortgage 8 A L J 195 A right of contribution arises in cases in which payment has been enforced by sale of the property of the claimant for contribution as well as in cases in which [illegible] sential for the accrual [illegible] has been paid The [illegible] laimant of the amount [illegible] uch that property was rateably l able and whether the property from the owners of which contribut on is claimed has to that extent been relieved of liab lity and has thus benefited There is no distinc ion between co sureties and co-mortgagors A person claiming contribution in the case of mortgage debt in entitled to a charge on the property for contribution 26 A 407 (F B) Where several properties are mortgaged to secure a debt the owner of the property that has been made liable for more than its rateable proportion of the debt has a charge on the other properties It creates no personal liability against the owner of the property 8 A L J 854 But when one of the several heirs of the mortgagor pays off the mortgage-debt he does not thereby acquire a charge on the mortgaged property 9 C W N 865 When one of the co-mortgagors pays off the mortgage debt he acquires a charge 4 C L J 79, see also 15 Ind Cas 262, 2 A L J 698 See cases reported in 19 A 545, 22 A 284 (F B), 7 Bom L R 191, 32 B 153, 7 C L J 274, 24 M 85, 27 A 549, 8 A L J 1092, 44 A 588, 43 A 589, 40 M L J 129

Amendment—This section enunc ates the rule of contribution where several properties are mortgaged In our opinion, the principle of contribution ought to cover a case not only where several properties are mortgaged but where the mortgaged property is subsequently sub divided into distinct and separate port ons,

* The words within quotations have been substituted by Act XX of 1929
† Substituted by Act XX of 1929

the liability of the co-sharers being distinct and several and not joint This question was raised in I L R 26 M 686, but was not decided In some cases it has been held that when the title becomes severed after the mortgage either by the death of the mortgagor or by the sale of the shares in the property by the mortgagor, the rule of contribution applies (see 1 All 455, 20 Bom 615, 21 Cal L J 104, 43 All 589). We propose to amend the section to make this point clear

There is also some difference of opinion as to whether for the purpose of contribution the value of the different properties or the portions of one property should be calculated as at the date of the original mortgage or at the date of the subsequent transfer In some cases it has been held that valuation is to be made as at the date of the mortgage irrespective of the price that may have been paid by the purchaser (see 12 C W N 107, 745, 27 All 549) In a Bombay case, however the valuation at the date of the sale was adopted (I L R 26 Bom 88) We propose to provide that the value taken shall be the value as at the date of the original mortgage This rule has the support of the Judicial Committee who, in assessing contribution to a decree for mesne profits, assessed liability at the date of the decree (L. R 31 I A 94)

Following the reasons for the similar amendment in section 18 in the last paragraph of the section the word 'susbequent has been substituted for the word second' before the word "mortgagee'—*Report of the Special Committee*

Clause (a)—The words 'shares in are inserted in the clause to make it clear that it applies to cases where the property is owned by several owners but has not been physically partitioned—*Report of the Sele t Cammittee*

Deposit in Court

83 At any time after the principal money 'payable in respect of any mortgage has become due' * and before a suit for redemption of the mortgaged property is barred, the mortgagor or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage

Power to deposit in Court money due on mortgage

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition verified in manner prescribed by law for the verification of plaints, sta[illegible] his willingness to accept the [illegible]nt and, on depositing in the [illegible] in his possession or power [illegible] and receive the money, and [illegible]'† so deposited shall be delivered to the mortgagor or such other perso as aforesaid

Right to money deposited by mortgagor

"Where the mortgagee is in possession of the mortgaged property the Courts shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor [illegible] mortgagor or to such third [illegible] (where the mortgage has [illegible]red an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished' ‡

Notes—A mortgagor on depositing the money in Court is entitled to possession of the property A W N 1885 328 But see 62 Ind Cas 577 Wher the first

* Substituted by Act XX of 1929
† *Vide* the Civil Procedure Code, Act V of 1908
‡ Inserted by Act XX of 1929

deposit is insufficient a second deposit can also be made 8 C W N 616 After deposit he is not bound to pay interest 8 Ind Cas 763 A deposit of mortgage money made by the mortgagor to the credit of several persons of whom some alone were entitled to it while others were not would not amount to a proper deposit so as to entitle the mortgagor to the benefit of this section 23 M 510 After tender no interest is chargeable 19 C W N. 153 Where the mortgagee is a minor a guardian *ad litem* is to be appointed 27 B. 23 A mortgagee is not bound to accept deposit if it is insufficient 1 C P L R 154 In the case of such a deposit interest will not cease. 19 A L J 582 Money deposited under this section becomes the property of the mortgagee 29 M 232 The deposit must be to the account of the mortgagee 29 M 232 The deposit must be to the account of the mortgagee alone 26 A 291= A W N 1901, 21=I A L J 5 A deposit under this section should be made unconditionally 14 M 49

A tender of mortgage amount under this section, subsequent to the suit is not valid in law and does not disentitle the plaintiff to interest after the deposit 10 M L T 37, 35 M L J 605 Before notice of deposit the mortgagee filed a suit and [illegible] *Held* that the plaintiff could [illegible] ee accepts the [illegible] unt due neither [illegible] the mortgagor [illegible] nake the tender [illegible] 'also sufficient [illegible] ee but pending [illegible] But conditional [illegible] 42=5 Ind Cas [illegible] 174 See cases [illegible] tice is served [illegible] 60 Ind Cas 454 A tender of a sum larger than the amount remaining due on a mortgage is valid tender 34 M L J 439=7 L W 537=45 Ind Cas 368

Amendment—In addition to the remedies open to a mortgagor for redemption by tender out of Court or by a suit this section provides a summary procedure for redemption The section is a survival of the repealed Bengal Regulation I of 1798 and XVII of 1806 Deposit made under this section has all the effects of a valid tender and the withdrawal of the deposit by the mortgagee has the effect of discharging *the mortgage (I L R 17 Mad 267) According to the rules framed with reference* to the section by the High Courts of Calcutta Madras and Bombay the mortgagee before he is entitled to draw the money, may be required to file all documents of title that are in his possession and also a draft reconveyance or an acknowledgment as he would be required to do under section 60 In the absence of an express provision similar to that in the first paragraph of section 60, the validity of those rules has been doubted (*see* Shephard and Brown, Transfer of Property Act p 352, 7th Edn) The proposed amendment is intended to remove this doubt—*Report of the Special Committee*

84 When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender, or "in the case of a deposit, where no previous tender of such amount has been made" * as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, "and the notice required by section 83 has been served on the mortgagee

Cessation of interest

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal" . †

Nothing in this section or in section 83, shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall

* Substituted by Act XX of 1929 † Inserted by Act XX of 1929

be entitled to reasonable notice before payment or tender of the mortgage money, "and such notice has not been given before the making of the tender or deposit, as the case may be" *

Notes—The mortgagor tendered the mortgage amount but the mortgagee refused to accept the same. Subsequently the mortgagor became unable to pay, but the mortgagee did not make any demand. *Held* that under this section interest ceased from the date of tender. The word tender does not itself imply that the tenderer must always be ready to pay the money. The mortgagee not having made any subsequent demand, was not entitled to interest from the date of the tender 33 M 100=6 M L T 262=3 Ind Cas 729. But see 3 Pat L T. 332, 34 M L J 488. An offer by notice of the amount due under a mortgage without production of the money is not a good tender 42 A 420. A mere readiness and willingness to pay not communicated to the creditor and without the accompanying circumstances of the debtor being in a position to pay immediately if the offer is accepted, does not amount to a valid tender 45 Ind Cas 106. Partial tender by some of the mortgagors is not good tender 40 A 407.

[illegible]

proper deposit, refuses to take the deposit, there is still a presumption that the mortgagor continues ready and willing to pay, and the interest does not run even if the mortgagor withdraws the deposit. In our opinion this view is not correct. It is obviously unreasonable that interest on the mortgage debt should cease to run if the mortgagor withdraws the deposit and derives benefit from the money withdrawn. We propose to add a proviso to the first paragraph of the section making it clear that where the mortgagor has deposited the amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof interest on the principal money shall be payable from the date of the withdrawal.

In paragraph 3 we also propose to make it clear that if the mortgage deed provides that reasonable notice before payment of tender of the mortgage money is to be given to the mortgagee the provision of this sections will not apply till such notice has been given. *Report of the Special Committee*

Suits for Foreclosure, Sale or Redemption

85 (*Parties to suits for foreclosure, sale and redemption—Repealed by Act V of 1908*)

86 (*Decree in foreclosure—Repealed by Act V of 1908*)

87 (*Procedure in case of payment of amount due—Repealed by Act V of 1908*)

88 (*Decree for sale—Repealed by Act V of 1908*)

89 (*Order absolute for sale—Repealed by Act V of 1908*)

90 (*Recovery of balance due on mortgage—Repealed by Act V of 1908*)

Redemption

Persons who may sue for redemption

† "91. Besides the mortgagor, any of the following persons may redeem or institute a suit for redemption of the mortgaged property, namely —

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon the property mortgaged or in or upon the right to redeem the same,

(*b*) any surety for the payment of the mortgage debt or any part thereof, or

(*c*) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property."

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* Inserted by Act XX of 1929

† Substituted by Act XX of 1929. The amendment of this section is not to have retrospective effect, *vide* section 63 of Act XX of 1929

Amendment—Section 91 specifies persons who in addition to a mortgagor are entitled to redeem Clauses (*a*) and (*b*) can be suitably combined in one clause Clauses (*d*) and (*e*) are superfluous, and in our opinion should be omitted

An attachment does not create any interest such as a charge or a loan in the property attached (I L R 29 Cal 428=32 Mad 422), and there is no reason why an attaching creditor should have the right of redemption We, therefore, propose to omit clause (*f* *Report of the Special Committee*

Clause (a)—The Zemindar is not within the meaning of this section of the Transfer of Property Act, 1882, a person having an interest in the mortgaged preperty so as to entitle him to redeem the mortgage of his holding made by a tenant at fixed rates who has died without heirs A W N 1901, 210=5 A L J 578 Where a superior proprietor obtained a decree against the inferior for revenue payable under sub settlement the decree operates as a charge on the the land included in sub settlement 11 C P L R 95 A daughter in law of a Hindu entitled to maintenance has not such an interest in the family property within the meaning of s 91 of Transfer of Property Act as would entitle her to redeem 12 O C 37 Reversioners of a Hindu during the lifetime of the widow cannot redeem 5 A L J 631

Clause (b)—A mortgagee created a sub-mortgage, in favour of the plaintiff of land mortgaged to him In the mortgage deed, the sub mortgagor, in express terms transferred his interest in the land to the sub mortgagee Further the sub mortgagor left a portion of the consideration money in the hands of the sub mortgagee for redeeming a prior mortgage in respect of the property As the prior mortgagee refused to accept the sum due to him under the mortgage and deliver up possession of the property the plaintiff brought the present suit for redemption against the prior mortgagee *Held* that the sub mortgagee is entitled to redeem the prior mortgage 2 A L J 162=27 A 473=A W N 1935, 18 Where a Hindu widow has mortgaged the property the next reversioner can redeem 8 O C 349 This section does not lay down that a person who is entitled to a share only of the equity of redemption has under all circumstances, the right to insist on redeeming the whole of the mortgaged property Where there are several persons in whom the equity of redemption is vested, there is no reason why one of them and the mortgagee acting together should not be held to be entitled to deal with his interest in the equity of redemption and the mortgagee's right as against him provided the rights of the other owners of the equity of redemption are not thereby injuriously affected The objection to a mortgagee's splitting up of a mortgage is entitled to weight only where one owner of the part of the equity of redemption is prejudicially affected by the splitting 12 M L T 484 =M W N 1912, 1168=23 M L J 576

A demise of temple property granted by a majority of the trustees of a temple without consulting the minority is invalid and not binding on the temple 16 Ind Cas 435

A person who has acquired the mortgagor's interest after decree conditional for forclosure was passed, but before that decree was made final, is not a person entitled to redeem under clause (b)—93 Ind Cas 496

*"**92** Any of the persons referred to in section 91 (other than the mortgagor) and any co mortgagor shall on redeeming property subject to the mortgage, have so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee

Subrogation

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of

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* Substituted by Act XX of of 1929 These sections have no restropective operations *vide* s 63 of Act XX of 1929

the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full

93 No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage shall thereby acquire any priority in respect of his original security, and, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance

Prohibition of tacking

94 Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor"

Right of mesne mortgagee

Notes—As stated before, sections 74 and 75 of the Act are based on what is known as the principle of subrogation The principle can come into operation either ... or by operation of law but techni... where the right arises by operation ... ney to the debtor for the purpose of ... o be substituted in the place of the ... of the security discharged with his money (*see* Domatt's Civil Law, section 1774, *see* also Hunter's Roman Law, pp 441 and 443), and this right has been recognised in all modern systems derived from Roman Law Section 74 is confined to the case when a subsequent mortgagee pays off a prior mortgagee The rule contained in the section is really covered by section 75, but both those sections apply only to the case of a subsequent mortgagee The principle of subrogation, however ought to apply generally to all cases other than those of a mortgagor who pays off his own debt or of a mere volunteer In *Bisseswar Prasad* v *Lala Harnam Singh*, 6 C L J 134 at pp 137, 138, it is observed as follows —

"The doctrine of subrogation is a doctrine of equity jurisprudence It does not depend on privity of contract express or implied except in so far as equity may be supposed to be imported into the transaction, and thus raise a contract by implication It is founded on the facts and circumstances of each particular case and on the principles of natural justice While, therefore the doctrine will be applied in general wherever any person other than a mere volunteer pays a debt or a demand which in equity or good conscience should have been satisfied by another, or where the liability of one person is discharged out of a fund belonging to another, or where one person is compelled for his own protection or that of some interest which he represents to pay a debt for which another is primarily liable, or wherever a denial of the right would be contrary to equity and good conscience the doctrine will never be permitted where the application of it would work injustice to the rights of those having equal or superior equities"

In our opinion all person... the right of redemption ... section 91 as having the rig... substituted in the place of t... sections 74 and 75, and to ... tion

A surety is obviously entitled to be subrogat... pays him off To use the argument of Sir S... (14 Ves 160 at p 162) a surety will be entitled ... has against the principal debtor to enforce every ... to stand in the place of the creditor, not only ... even by means of securities entered into without the knowledge of the surety, having the right to have those securities transferred to him though there was no stipulation

for that, and to avoid himself of all those securities against the debtor. The same principle has been incorporated in sections 140 and 141 of the Indian Contract Act, 1872

The right of a co mortgagor or one of several joint debtors to be subrogated to the security of the creditor, so as to enable him to recover from his co debtors by means of such securities their proportionate shares of indebtedness which has been discharged by him rests upon the same equity as that of a surety or any other person entitled to redeem the mortgage for each joint debtor is regarded as the principal debtor for that part of the debt which he ought to pay and as the surety for his co debtors as to the part which ought to be discharged by them (see Ghose on Mortgage Vol I, p 371, 5th Edn)

It cannot, however, be laid down as a general rule that a person merely discharging a debt is entitled to the benefit of the mortgage Obviously, a mortgagor himself who is liable to pay a debt contracted by him or the transferee from such a mortgagor who has undertaken the liability cannot claim the right of subrogation, nor can the application of the principle be invoked in favour of a mere volunteer (I L R 32 All 25) As stated in Ghose on Mortgage Vol I, p 364, 5th Edn, the real question in all such cases is, whether the payment made by a person who is not in any way interested in the mortgaged propert [illegible]
loan to the debtor on his personal security [illegible]
ment that he should be substituted for the c [illegible]
may presume such an agreement, we think it [illegible]
ment must be reduced to writing and must be registered

In order to avoid any complication and the difficulty of apportioning the claims arising from subrogation the Courts have held that a right of subrogation does not arise till the whole of the mortgage debt is paid off (I L R 36 Cal 193 38 All 502) We, therefore, propose to provide in the last paragraph of section 92 that the right of subrogation shall not be claimed unless the mortgage in respect of which the right is claimad has been redeemed in full

As the principal of 'tacking is closely allied to subrogation, we propose to put section 80 as section 93

Section 75 and Order XXXIV rule 11 of the Code of Civil Procedure 1908 embody partly the principle of subrogation and partly the principal expressed in the phrase 'redeem up and foreclose down' We have transferred to section 92 so much of section 75 and of Order XXXIV, rule 11, as relates to the doctrine of subrogation and embodied in a new section so much of the section and rule as relate to the conception of foreclosing down As this is a rule more of substantive law than of procedure, its proper place is in the Transfer of Property Act 1882 and not in the Code of Civil Procedure, 1908 We, therefore, propose to omit section 75 and to repeal Order XXXIV, rule 11 As this doctrine is akin to the doctrine of subrogation, we have placed it after section 92 —*Report of the Special Committee*

Rights of redeeming co mortgagor to expenses

*95 *Where one of several mortgagors redeems* the mortgaged property, he shall in enforcing his right of subrogation under section 92 against his co mortgagors, be entitled to add to the mortgage money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property

Mortgage by deposit of title deeds

96 The provisions hereinbefore contained which apply to a simple mortgage shall so far as may be, apply to mortgage by deposit of title-deeds

Notes—Section 95 gives a co mortgagor redeeming the mortgage a charge on the shares of other co mortgagors in the mortgaged property for expenses incurred by him in redeeming the mortgaged property and obtaining possession thereof The section has been based on the observation in Macpherson's Law of Mortgage in Bengal and the N W Provinces, 5th Edn, p 145 It is difficult to understand why

* Substituted by Act XX of 1929

the word obtains possession thereof are inserted in this section In I L R 11 Mad 416 the Madras High Court observed that the section gave the redeeming co mortgagor two rights, (1) a right to obtain possession, and (2) a charge on the interest of the co mortgagors In I L R 26 All 227, the Allahabad High Court held that the words were only applicable if the mortgagee is in possession In *Malik Ahmad Wali Khan* v *Musammat Shamsi Jahan Begam*, L R 33 I A 81, their Lordships of the Privy Council observed as follows —

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... s to make

In view of the above observation, the reference to the recovery of possession in the section seems undesirable and we propose that it should be omitted More over, as in the proposed section 92 a co mortgagor is allowed the right of subrogation, we are of opinion that instead of providing for a separate charge for the costs of redemption it will be better if it is provided that a co mortgagor can add such costs to the mortgage money and recover them from other co mortgagor in proportion to their shares in the property We have amended the section accordingly —*Report of the Special Committe*

Section 96 — As the present law is not clear regarding the rights and liabilities of parties to a mortgage by the deposit of title deeds, we have inserted a new section (section 96) applying to such mortgages the provisions applicable to simple mortgages —*Report of the Select Committee*

97 (*Application of proceeds—Repealed by Act V of 1908*)

Anomalous Mortgages

98 In the case of "an anomalous mortgage"* the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage deed and, so far as such contract does not extend, by local usage

Mortgage not described in section 58 clauses (*b*), (*c* (*d*) and (*e*)

Notes —Under the terms of the mortgage deed the mortgagee was put in possession of the mortgaged property and was authorised to retain possession until payment of the mortgage money, the mortgagor being given credit for all profits recovered from the land over and above the Government assessment The deed further contained a personal covenant by the mortgagor to pay the mortgage

... ler section 58 the definition of an
... In our opinion, this section should
... these mortgages —*Report of the*

99 (*Attachment of mortgaged property—Repealed by Act VIII of 1908*)

Charges

100 Where immovable property of one person is by act of parties or operation of law, made security for the payment of money to another, and the transaction does not amount to a mortgage the latter person is said to have a charge on the property, and all the provisions hereinbefore contained "which apply to a simple mortgage shall, so far as may be, apply to such charge" *

Charges

* Substituted by Act XX of 1929

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust "and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge "*

Notes—The charge referred to in s 65 of the Bengal Tenancy Act is not such a charge as is defined in s 100 of the T P Act 4 C L J 219=33 C 985 A *Kabuliat* provided "the burden of the liability for paying *Zar parjole* and *Zar caaharum* shall remain first upon materials of the house" *Held* that these words standing as they are, are not sufficient to constitute a charge upon the property within the meaning of the section 2 A L J 754 A document which creates a charge within the meaning of section, must be a document which creates a charge at the time and not merely a possibility of a charge 3 A L J 220=A W N 1906 82 The bonds which are described as bonds 'tacked on to the mortgage deed" and stamped as possessory mortgages and contained in full specification on the mortgaged property as in a regular mortgage, create a charge under this section 6 A L J 255=1 Ind Cas 345 A document, to create a charge on immovable property under this section of the Transfer of Property Act, must create such charge immediately on its execution and not operate as such only at some future time, *e g*, upon the non payment of the money secured by the document, in which case it creates only the possibility of a charge ultimately arising on the land, and not a 'charge' under the section 14 C 687 A covenant by the vendee with the vendor to pay the plaintiff a certain quantity of rice annually whereon the plaintiff relied, would not give rise to a charge 5 M L T 78=2 Ind Cas 617.

Amendment—Section 100 defines a charge, and the latter part of the section provides that all provisio ... shall apply in the case of a ... the rights and liabilities of a ... able from a mortgage, in that it does not amount to transfer of any interest in the property s ... desirabl ... charge ... gage, as a charge ... gagee A chargeholder, like a simple mortgagee, has only a right to bring the mortgaged property to sale, he cannot have a right of foreclosure *See* Order XXXIV, rule 15 of the Code of Civil Procedure, 1908

As a charge does not involve the transfer of an interest in the property subject thereto, it has been held that it cannot be enforced against a transferee for consideration without notice (I L R 9 All 591, 13 All 28, 33 Cal 93, 42 Cal 849, and 19 C W N 37) The contrary view was taken in some cases where a charge was created by a decree (2 All 162, 28 All 655 and 38 All 254) The former view appears to us more consistent with equity

As charges created by the operation of law or by a decree will not necessarily be registered, it is desirable to protect transferees for consideration without notice and provide that a charge will not be enforced against them

† "**101** Any mortgagee of, or person having a charge upon immovable property, ... or charg ... acquire t ... gagor or owner, as the case may be, ... charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property, and no such subsequent mortgagee or chargeholder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto "

No merger in case of subsequent encumbrance

... that if a

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or the owner his own mortgage or charge is extinguished, unless he expressly reserves the continuance of such mortgage or charge or unless such continuance is held to be for his benefit. As stated in an American case, 'the doctrine of merger springs from the fact that when entir[illegible] same person, there can be no occasion t[illegible]

[illegible]

set up against such subsequent incumbrances either a prior mortgage of his own or a mortgage which he may have paid off A purchaser of the equity of redemption can easily take steps to defeat the effect of Toulmin's case by simply stating that the original debt paid off subsists for his benefit The rule in Toulmin's case has been embodied in the present section 101, but decision in that case has been more than once questioned In English Court (*See* 2 W & T L C, p 49, 8th Edn) In *Thorne* v *Cann*, (1895) A C p 11, Lord Herschell observed with regard to Toulmin's case as follows —

"A case which has certainly not met with universal acceptance and it has often been commented upon and criticised adversely '

In the same case Lord Macnaghten said —

"The authority of that case cannot now a days be treated as going beyond the actual decision"

In several cases the Privy Council has laid it down that in each case it will depend on the intention of parties whether a particular charge or incumbrance was extinguished or subsisted (10 I A 62, 11 I A 126 29 I A 9 and 39 I A 68) In *Gokuldass* v *Rambux*, 11 I A 126 at p 133 Sir Richard Couch, after reviewing the Indian decisions on the point which followed the rule in Toulmin's case observed —

'The doubts as to that case (*Toulmin* v *Steere*) or the propriety of introducing the doctrine of it into India as a rule of justice, equity and good conscience do not seem to have been considered by the High Court at Calcutta or Bombay

'The doctrine of *Toulmin* v *Steere*, is not applicable to Indian transaction except as the law of justice, equity and good conscience And if it rested on any broad intelligible principle of justice it might properly be so applied But it rests on no such principle If it did it could not be excluded or defeated by declarations of intention or formal devices of conveyancers, whereas it is so defeated every day When an estate is burdened by succession of mortgages and the owner of an ulterior interest pays off an earlier mortgage, it is a matter of course to have it assigned to a trustee for his benefit as against intermediate mortgagees to whom he is not personally liable'

'In India the art of conveyancing has been and is of a very simple character There Lordships cannot find that a formal transfer of a mortgage is ever made, or an intention to keep it alive ever formerly expressed To apply to such a practice the doctrine of *Toulmin* v *Seere* seems to them likely, not to promote justice and equity but to lead to confusion, to multiplication of documents to useless technicalities, to expense and to litigation"

In a recent case in *Malireddi Ayyareddi* v *Gopala Krishnayya*, I L R 47 Mad. 190, the Privy Concil has again remarked as follows —

'It is now the settled law that where in India there are several mortgages on a property the owner of the property subject to the mortgages may, if he pays off an earlier charge treat himself as buying it and stand in the same position as his vendor, or to put it in another way, he may keep the incumbrance alive for his benefit and thus come in before a latter mortgagee'

We propose [illegible] effect to the long course of decisions both in England as [illegible] to above It may generally be taken to be [illegible] benefit, to keep his own incumbrances, as [illegible] against subsequent incumbrances We [illegible] section —*Report of the Select Committee*

Notice and Tender

102 Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside *in the district in which the mortgaged property* or some part thereof, is situate, service or tender on or to an agent holding a general power of attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Service or tender on or to agent

"Where no person or agent on whom such notice should be served can be found or is known"* to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient

"Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made "*

"Where no person or agent to whom such tender should be made can be found or is known"† to the person desiring to make the tender, the latter person may deposit "in any Court in which a suit might be brought for redemption of the mortgaged property' † the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount

Notes—Tender must be made either to a principal or to an agent and tender made to a person who disclaims authority to receive it, is made at the maker's risk 32 B 521

Amendment.—Section 102, which relates to the service of notice on or *tender to an agent of a mortgagee allows the mortgagor to apply* to the Court for direction if the mortgagee or his agent cannot be found *in the district* in which the mortgaged property is situate Even if the mortgagor knows the mortgagee or his agent's whereabouts outside the district, the section allows him to apply to the Court The third paragraph also contains a similar provision as regards tender We think that unless the whereabouts of the mortgagee or his agent are *entirely* unknown to the mortgagor or unless the mortgagee or his agent cannot be found *anywhere*, the mortgagor should not be entitled to apply to the Court for direction We propose to omit the words in the district *in paragraphs 2 and 3 of the section* In paragraph 2, we propose to make it clear that the application for the service of notice shall be made to the Court in which the deposit has been made and not to any other Court In paragraph 3 we propose to make it clear that deposit is to be made in the Court in which a suit for redemption could be filed —*Report of the Special Committee*

103 Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served "on or by"*or tender or deposit made, accepted or taken by the legal curator of the property of such person, but, where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made, under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such *notice, or making or accepting such tender*, or making or taking out of Court such deposit, and for the performance of all consequential or acts which could or ought to be done by such person if he were competent to contract, and the provisions of "Order XXXII in the first Schedule to the Code

Notice, &c, to or by person incompetent to contract

* Inserted by Act XX of 1929 † Substituted by Act XX of 1929

of Civil Procedure, 1908 "* shall, so far as may be, apply to such application, and to the parties thereto, and to the guardian appointed thereunder

Amendment—To correct a mere clerical error we propose to insert the words "on or by" after the words 'such notice may be served" The latter part of the section has been omitted as being unnecessary—*Report of the Special Committee*

Change by the Select Committee—"We do not consider that the words beginning with *ad litem* in the concluding part of section 103 should be omitted as

104. The High Court may, from time to time make rules consistent with this Act for carrying out in itself, and in the Court of Civil Judicature subject to its superintendence, the provisions contained in this Chapter

Power to make rules

Notes—This section is an enabling section and the rules made by the High Court under the provisions of this section do not limit the applicability of the Civil Procedure Code regarding sales held in execution of mortgage decree 4 C W N 474

CHAPTER V

Of Leases of Immovable Property

105 A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised or of money, a share of crops service, or any other thing of value to be rendered periodically, or on specified occasions to the transferor by the transferee who accepts the transfer on such terms

'Lease' defined

The transferor is called the lessor the transferee is called the lessee, the price is called the premium and the money share service or other thing to be so rendered, is called the rent

'Lessor,' 'lessee' premium, and 'rent defined

Service—Lease in lieu of medical service is lease 32 C 243

106 In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy, and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice, expiring with the end of a month of the tenancy

Duration of certain leases in absence of written contract or local usage

Every notice under this section must be in writing, signed by or on behalf of the person giving it, "and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party,"* or to one of his family or servant at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property

Duration of lease—Under this section, in the absence of a contract or local law or usage to the contrary, a lease of immovable property other than agricultural or manufacturing, is terminable with fifteen days notice expiring with the end of a month of the tenancy A month of tenancy means a period of the month reckoned with reference to the commencement of the lease 7 C P L R 150, 30 M 129=16

* Substituted by Act XX of 1929

M L. J 533 Where a plot of land is let for the purpose of planting a grove there on, the lease is governed by this section 9 A L J 483=19 Ind Cas 799 Where a lease of land, for a purpose other than agricultural or manufacturing purposes is granted for a term of years and the lessee holds the land over after the expiration of the term, such holding over must be deemed to be a lease from month to month terminable on the part of either lessor or lessee by 15 days' notice expiring with the end of a month of the tenancy 32 C 123=8 C W N. 901 Where the landlord has not assented to such holding over, the tenancy can be terminated without notice 8 M L T 230=7 Ind. Cas 8, 13 Ind Cas 59=9A L J 574 See also cases reported in 51 Ind Cas 44, 49 Ind Cas 974, 23 C W N 319; 50 Ind Cas 109; 23 C W N 641.

Contract to the Contrary—A condition in a deed of lease, whereby the lessee agrees to surrender the property demised to the lessor on demand is "a contract to the contrary' within the meaning of this section 8 Ind Cas. 362, see also 47 Ind Cas 19

Since the passing of the Act VI of 1904, a lease of immovable property from month to month is not a valid document if it is not duly registered 11 Ind. Cas 863

Notice—The giving of a notice is a condition [illegible] a suit for ejectment of the lessee A W. N. 1890, [illegible] period must end with a calendar month A W [illegible] begins at the middle of a calendar month but rents [illegible] month, the notice is to terminate with calendar [illegible] has been delivered by the post peon but it was refused, the requirements of this section has been fulfilled 16 Ind Cas 213

Amendment—It has been held both in England and in India that, in the case of notice to quit, service by post is a recognised mode of service [(1906) 2 K B 82 I L R 46 Cal 458] We therefore, propose to make an addition to the second paragraph of section 106 that notice under this section may be sent by post to the party who is intended to be bound by it —*Report of the Special Committee*

107 A lease of immovable property from year to year for any term exceeding one year, or reserving a yearly rent, [illegible]

Leases how made [illegible]

"All [illegible] ered instrum [illegible] stru † [illegible] ment such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and lessee."

'Provided that the Loc[illegible] C[illegible] sanction of the Governor General in [illegible] on in the local official Gazette, dire[illegible] her than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."*

Notes—An agreement to execute a lease of immovable property for any term exceeding one year must be registered 9 O C 296, 11 Ind Cas 863 Lease includes a *Kabulyat* and that it need not be executed by the lessor 8 O C 197; but see 26 A 368=1 A L J 96=A W N 1904, 46 A *hat* is a benefit arising out of land, and therefore, it is immovable property The lease of a *hat* therefore comes within the provisions of this section 22 C 752 An agricultural lease can be created without registration 7 Ind Cas 864 Where there is no proof of any contract [illegible] that the possession of one is held under [illegible] not applicable 17 C L J 197. *A lease* [illegible] A lease of a house by oral agreement [illegible] delivery of possession 11 Ind Cas 849 [illegible] registered 1 Ind. Cas 903 Under this [illegible] more than a year could not be created, or proved, by the production of a *Kabulyat*, such a lease or *patta* must be duly

* Substituted by Act VI of 1904 † Inserted by Act XX of 1921

executed and registered, and except by the production of such a document, no lease could be proved in a Court of Justice. 27 A 136=A. W. N 1904, 189=1 A L J 576

The registered Instrument referred to in this section, need not necessarily be ... the lessee only he is not pre- ... T 437 (F B)=8 Ind Cas ... nly which is accepted by the ... 106=15 C L J 665=14 Ind

Amendment—There has been a difference of opinion whether a lease should be executed by both the lessor and the lessee or need only be executed by one of them The Allahabad High Court holds to the view that a lease must be by deed ... does ... was ... Mad ... 95 ... t the ... con- taining, as it usually does, covenants both on the part of the lessor and the lessee, should be executed by both the lessor and the lessee The first paragraph of the proposed new section 107 introduces this requirement—*Report of the Special Committee*

The special committee proposed to provide in this section that all leases of immovable property shall be registered They however proposed an exception in the case of leases for month to month or for any term not exceeding one month This alteration however did not find favour with the Select Committee They said ... made in ... ds not ... of the ... and the provision —*Report of the Select Committee*

108 In the absence of a contract or local usage to the contrary the lessor and the lessee of immovable property as against one another, respectively possesses the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased —

Rights and liabilities of lessor and lessee

A—Rights and Liabilities of the Lessor

(*a*) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover

(*b*) the lessor is bound, on the lessee's request, to put him in possession of the property

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease, and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption

The benefit of such contract shall be annexed to, and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested

B—Rights and Liabilities of the Lessee

(*d*) If, during the continuance of the lease, any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease,

(*e*) if by fire tempest or flood or violence of an army or of a mob or other irresistible force any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let the lease shall at the option of the lessee be void

Provided that if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision

(*f*) if the lessor neglects to make within a reasonable time after notice any repairs which he is bound to make to the property, the lessee may make the same himself and deduct the expense of such repairs with interest from the rent or otherwise recover it from the lessor,

(*g*) if the lessor neglects to make any payment which he is bound to make and which if not made by him is recoverable from the lessee or against the property the lessee may make such payment himself and deduct it with interest from the rent or otherwise recover it from the lessor

(*h*) the lessee may even after the determination of the lease* remove at any time whilst he is in possession of the property leased but not afterwards † all things which he has attached to the earth provided he leaves the property in the state in which he received it,

(*i*) when a lease of uncertain duration determines by any means except the fault of the lesee he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines and to free ingress and egress to gather and carry them

(*j*) [illegible] ge or sub lease the whole [illegible] nsferee of such interest o [illegible] reason only of such transfer cease to be subject to any of the liablities attaching to the lease

Nothing in this clause shall be deemed to authorize a tenant having an ntransferable *right of occupancy the farmer of an estate in respect* of which default has been made in paying revenue or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant farmer or lessee

(*k*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take of which the lessee is and the lessor is not, aware, and which materially increases the value of such interest

(*l*) the lessee is bound to pay or tender at the proper time and place the premium or rent to the lessor or his agent in this behalf

(*m*) the lessee is bound to keep and on the termination of the lease to restore the property in as good condition as it was in at the time when he was put in possession subject only to the changes caused by reasonable wear and tear or irresistible force and to allow the lessor and his agents at all reasonable times during the term to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition, and when such defect has been caused by any act or default on the part of the lessee his servants or agents he is bound to make it good within three months after such notice has been given or left,

(*n*) *if the lessee becomes aware of any proceeding* to recover the property or any part thereof or of any encroachment made upon or any interference with the lessor s rights concerning such property he is bound to give with reasonable diligence notice thereof to the lessor,

(*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own but he must not use or permit another to use the property for a purpose other than that for which

* Inserted by Act XX of 1929 † Substituted by Act XX of 19 9

it was leased, or fell "or sell * timber, pull down or damage buildings, "belonging to the lessor or"* work mines or quarries not open when the lease was granted or commit any other act which is destructive or permanently injurious thereto,

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes,

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property

Clause (a)—The lessor should disclose the defects otherwise he is bound to pay damages 3 B L R 277=12 W R 145 This clause has no application to an agricultural lease 3 C L J 59

Clause (b)—A lessor is bound to put lessee in possession of leased property 25 M 587, 33 M 102, 33 M 499 9 C L J 595, 40 Ind Cas 684

Clause (c)—This clause notwithstanding its conditional form was not intended
nvenant for quiet enjoyment conditional on
J 119 The words without interruption
on the part of the lessor and the lessor is
see in case of eviction by a paramount title

Clause (d)—*Vide* 8 B L R 73, 21 C 233 (F B), 4 C W N 508

Clause (e)—The lessee of a house can avoid the lease, if the house be rendered substantially and permanently unfit for the purpose of which it was let by reason of the earthquake 7 Ind Cas 201; 12 Bom L R 478; 17 M 98, 23 B 15

Clause (f)—The cost of repairs amounts to payment of rent 12 C L J 315=6 Ind Cas 131

Clause (g)—*Vide* 6 C W N 336, 12 C 213

Clause (h)—This section only enables a tenant to remove his building during the term of tenancy But it does not thereby implicitly negative the right to receive any compensation or to remove the same afterwards if such right existed prior to its enactment 10 M L T 193

Clause (j)—This clause is not retrospective and does not apply to transfers which took place before the Act 2 C W N 122 All lessees including lessees holding under permanent leases are held liable for rent even after they have transferred their rights 12 C W N 724 The liability of an assignee of leasehold interest to the lessor being founded wholly upon purity of estate, cease upon transfer of such interest by the assignee to the other 14 C W N 831 A lease is heritable under this clause 37 C 377 The interest of a lessee of a homestead is transferable 46 Ind Cas 656 See cases reported in 47 Ind Cas 100, 43 Ind Cas 970

Clause (l)—The lessee is bound to pay from the date he is put in possession 5 C W N 816

Payment to one of the co shares is payment to all 22 B 794

Clause (m)—Where a lessee covenants to keep the premises wind and water tight and in habitable condition and the premises were subsequently damaged by an earthquake *Held* (*a*) that the lessee's covenant was absolute, and that he was bound by it even though the damage was caused by an irresistable force (*b*) that a covenant was a contract to the contrary within the meaning of s 180 and so cl (m) of that section had no application to the case, (*c*) that the lessee was not bound to execute all and every repair rendered necessary by earthquake, but was bound only to make good the damage caused by earthquake to the extent of making them wind and water tight and putting them in habitable condition 4 C W N 521

ease in
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removal'
ession by
tenant,
described
possibly

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* Inserted by Act XX of 1929

this may intend a tenancy at sufferance but at any rate not after the landlord has determined it by a re entry or by the issue of a writ in ejectment" (Foa on Landlord and Tenant, p 784, 6th Ed) We think it desirable to remove all uncertainty regarding the tenant's right of removal We think it would be consistent with justice if the tenant is allowed to remove his fixtures so long as he is in possession of the property even though the tenancy has come to an end This would make the period certain and it is immaterial whether the tenant vacates voluntarily or is compelled to vacate by process of law The landlord does not suffer because if the tenant is in wrongful possession, the landlord will be entitled to damages. If the tenant is in rightful possession, he obviously ought to have the right to remove his fixtures In either case the certainty of the period would work less hardship than the present uncertainty

It may be said that a dishonest tenant may take advantage of the proposed rule and keep the landlord out of possession for an indefinite period But such a tenant can do so whether he has fixtures or not, and in either event the landlord has his remedy in damages

Sub section (o) of section 108 provides that the lessee must not fell timber or
distinction between timber or
To make this point clear we
the word 'buildings'—*Report of the Special Committee*

109 If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long he is the owner of it but the lessor shall not, by reason only of such transfer, cease to subject to any of the liabilities imposed upon him by the lease unless the lessee elects to treat the transferee as the person liable to him

Rights of lessor's transferee

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee, and the lessee, may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they d sagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased

110 Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded Where no day of commencement is named, the time so limited begins from the making of the lease

Exclusion of day on which term commences

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences

Duration of lease for a year

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option

Option to determine lease

Determination of lease

111 A lease of immovable property determines —

(*a*) by efflux of the time limited thereby ,

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event ,

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event ,

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right ;

(e) by express surrender , that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them ,

(f) by implied surrender ,

(g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re enter,* or (2) in case the lessee renounces his character as such by setting up a title in a third person, or by claiming title in himself , "or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re enter on the happening of such event' ,† and in "any of these cases"‡ the lessor, or his transferee "gives notice in writing to the lessee of" ‡ his intention to determine the lease ;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other

Illustration to Clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease This is an implied surrender of the former lease and such lease determines thereupon

Clause (a) —A lease becomes determined for forfeiture only when the lessor does some act showing his intention to determine the lease 4 M L T 315

Clause (b) —*Vide* 4 M 424

Clause (c) —A permanent lease granted by a life tenant expires on his death 27 C 153 (P C) , see also 14 O C 204

Clause (g) —This section deals with whole lease of the immovable property comprised therein and not with a part or moiety of it a denial of title by one of several joint lessee cannot therefore entail forfeiture 11 C W N 587=7 C L J 648 A lease of immovable property determines by forfeiture, if there is a breach of condition which entitles the lessor to re enter and if the lessor does some act showing his intention to determine the lease 6 Ind Cas 766=7 M L T 419

The denial of landlord's title by the tenant in order to work a forfeiture under this clause must be an unequivocal and unambiguous denial 11 A L J 115= 35 A 145 *Vide* cases reported in 45 C 469 , 23 M L T 173 , 47 Ind Cas 635 , 45 Ind Cas 642 , 34 M L J 70 , 35 M L J 129 , 42 B 195

Clause (h) —Where a lease is entered into for a definite term, and there is a clause in it expressly forbidding surrender by the tenant, he cannot surrender before the expiry of the term Clause (h) of the Act has no application to such a case 9 C L J 632=2 Ind Cas 633

Amendment —Clause (g) of section 111 relates to the determination of a lease by forfeiture and provides for two cases in which forfeiture can be enforced Under sub head (1) forfeiture can be enforced— [illegible] in a lease which provides that on its [illegible] lessee breaks an express condition or [illegible] void The provision under (b) is not in [illegible] of English law that a lessee cannot [illegible] lease unless there is an express stipulatic [illegible] followed in India (I L R 17 Cal 826) The word in clause (g) "or the lease shall become void should therefore be omitted

* Certain words after this repealed by Act XX of 1929 have been omitted
† Inserted by Act XX of 1929
‡ Substituted by Act XX of 1929

Section 111, as it stands, does not provide for the case of forfeiture by reason of the adjudication of the lessee as insolvent It is provided by section 12 *inter alia* that where property is transferred subject to a condition making any interest therein reserved or given to or fo [illegible] insolvent, such condition is vo [illegible] paragraph of the section that [illegible] lease for the benefit of the lessor [illegible] if a lease contains a condition that on the lessee becoming insolvent the lease shall determine, the condition is valid Such a condition would not, however, operate as determination of the lease or have the effect of forfeiture under section 111 as it now stands It is, therefore, desirable to make express provision that if the lessee is adjudicated an insolvent and the lease provides that a lessor may re-enter on the happening of that event, the lease is determined by forfeiture

Under sub section (g) of section 111, which provides also for forfeiture in the case of the denial of the lessor's title it has been held that the lessor must do something showing his intention to determine the lease before actually filing a suit for ejectment (I L R 47 All 348, 45 Cal 469) As there has been some difference of opinion whether the mere institution of a suit amount to such an act (I L R 42 Bom 195) It is necessary to clear up the point Before a suit in ejectment is filed, the lessee must know that the lessor has decided to determine the lease and does not waive his right to do so —*Report of the Special Committee*

112. A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting

Waiver of forfeiture

Provided that the lessor is aware that the forfeiture has been incurred.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver

113 A notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it, showing an intention to treat the lease as subsisting

Waiver of notice to quit

Illustrations

(*a*) A, the lessor, gives B, the lessee, notice to quit the property leased The notice expires B tenders, and A accepts rent which has become due in respect of the property since the expiration of the notice The notice is waived

(*b*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires and B remains in possession A gives to B as lessee a second notice to quit The first notice is waived

114 Where a lease of immovable property has determined by forfeiture for non payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor *the rent in* arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture, and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred

Relief against forfeiture for *non-payment of rent*

Notes—Where the defendant has made a tender of the amount of rent due [illegible] it into Court and the plaintiff, nevertheless [illegible] does so at his risk. 17 M 216=4 M. L. J [illegible] terms apply, it may be taken as a correct [illegible] of forfeiture not governed by it. 8 M L J. [illegible] tion the exercise of the discretion to relieve [illegible] of rent will depend upon whether the lease [illegible], the reasonableness of such period 28 M [illegible]

***114A.** Where a lease of immovable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

Relief against forfeiture in certain other cases

(*a*) specifying the particular breach complained of, and

(*b*) if the breach is capable of remedy, requiring the lessee to remedy the breach,

and the lessee fails within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy

Nothing in this section shall apply to an express condition against the assigning, under letting parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent"

Notes—As the Transfer of Property Act, 1882, stand, the only case in which relief against forfeiture is provided for is non payment of rent—in section 114 of the Act Considerable hardship has been caused in case where forfeiture accrues on ... breach thereof the lessor may ... remedy This defect does not ... made by the Conveyancing ... ses These provisions of the ... of Property Act, 1925, section ... suitable to Indian conditions, should be introduced in the Transfer of Property Act, 1882, and we have accordingly added section 114A

"In the new section 114A ... proposed to ... irable ... ; and ... see is ... nt in many cases and may be excessive in others—we prefer to follow the English Act and to require the remedy to be completed within a reasonable time'—*Report of the Select Committee*

115 The surrender, express or implied, of a lease of immovable property does not prejudice an under lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease, but, unless the surrender is made for the purpose of obtaining a new lease the rent payable by, and the contracts binding on, the under lessee shall be respectively payable to and enforceable by the lessor

Effect of surrender and forfeiture on under leases

The forfeiture of such a lease annuls all such under leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114

116 If a lessee or under lessee of property remains in possession thereof ... accepts rent from the lessee in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106

Effect of holding over

Illustrations

(*a*) A lets a house to B for five years B underlets the house to C at a monthly rent of Rs 100 The five years expire, but C continues in possession of the house and pays the rent to A C's lease is renewed from month to month

* Inserted by Act XX of 1929 This section is not to pass any retrospective operation See section 63 of Act XX of 1929

(b) A lets a farm to B for the life of C C dies, but B continues in possession with A's assent B s lease is renewed from year to year

Notes—When an agricultural tenant holds over his tenancy is renewed from year to year 28 C 227 If a tenant by sufferance dies and his representative holds on he holds on as trespasser 31 M 163

117 None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the Local Government* may, be notification published in the local official Gazette, declare all or any of such provisions to be so applicable "in the case of all or any of such leases † together with, or subject to, those of the local law (if any) for the time being in force

Exemption of leases for agricultural purposes

Such notification shall not take effect until the expiry of six months from the date of its publication

CHAPTER VI

Of Exchanges

118 When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange"

'Exchange defined

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale

Notes—When some of the co owners possessing an undivided share in the several properties take, by arrangement, a specific property in lieu of their shares in all, the transaction effected is not an exchange within the meaning of this section but amounts to partition 25 C 210=2 C W N 91 But where plaintiff and defendants were joint owners of a certain property A and plaintiff alone was owner of another property B and by an oral agreement plaintiff got the former property A in its entirety and gave to the defendants his share in the other property B *Held* that the transaction was an exchange 5 C W N 724 The setting off of mutual decrees does not amount to exchange in as much as the essence of such a transaction is the mutual transfer of two things is wanting in this case 11 C W N 342 Where a tenant surrendered voluntarily certain leasehold right and took from the landlord leasehold rights of some other property, *held* that the transaction was not exchange 6 C W N 904

‡ "**119** If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration

Right of party deprived of thing received in exchange

Notes—This section relates to the rights of a party deprived of the thing received in exchange but does not provide for the rights of transferees from such party We propose to amend it on the lines of section 109 of the Indian Contract Act, 1872 ...
Further the section as it stands gives a righ ...
sation or the return of the thing transferred by ...
by him cannot be returned to him unless the o ...

* Certain words after this repealed by Act 38 of 1920 have been omitted
† Inserted by Act VI of 1934, s 6
‡ Substituted by Act XX of 1929 The amendment of this section is not to have retrospective operation

provide for this we have at the end of the new section added the words "if still in the possession of such other party"—*Report of the Special Committee*

Rights and liabilities of parties

120 Save as otherwise provided in this Chapter, each party has the rights, and is subject to the liabilities of a seller as to that which he gives, and has the rights, and is subject to the liabilities of a buyer as to that which he takes

Exchange of money

121 On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII

Of Gifts

"Gift" defined

122 'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called the donor to another, called the donee, and accepted by or on behalf of the donee

Acceptance when to be made

Such acceptance must be made during the lifetime of the donor, and while he is still capable of giving

If the donee dies before acceptance, the gift is void

[illegible]

tered deed is not invalid merely because registration of the deed of gift may have taken place after the death of the donor 10 Bom L R 737=32 B 441 Under the Transfer of Property Act registration is essential to complete a gift of immovable [illegible] of gift against the wishes of the donor is not [illegible] rder to make a gift complete, it is well settled that the donor must do all he can to make the [illegible] Karamat Hossain) But in the same case *Chami* [illegible]

Transfer how effected

123 For the purpose of making a gift of immovable property the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery

Such delivery may be made in the same way as goods sold may be delivered

Notes —A written direction by the donor to the tenant to pay the rent to the donee is invalid 19 M L J 255 This section does alter the Hindu law as to gift of immovable property so as to dispense with the necessity for delivery of possession [illegible]

Gift of existing and future property

124 A gift comprising both existing and future property is void as to the latter

Gift to several, of whom one does not accept

125 A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted

When gift may be suspended or revoked

126 The donor and donee may agree that, on the happening of any specified event which does not depend on the Will of the donor, a gift shall be suspended or revoked but a gift which the parties agree shall be revocable wholly or in part, at the mere Will of the donor, is void wholly or in part, as the case may be

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract it might be rescinded

Save as aforesaid, a gift cannot be revoked

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice

Illustrations

(*a*) A gives a field to B, reserving to himself, with B s assent the right to take back the field in case B and his descendants die before A B dies without descendants in A s lifetime A may take back the field

(*b*) A gives a lakh of rupees to B, reserving to himself with B s assent the right to take back at pleasure Rs 10 000 out of the lakh The gift holds good as to Rs 90,000 but is void as to Rs 10,000 which continue to belong to A

Onerous gifts

127 Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others although the former may be beneficial and the latter onerous

Onerous gift to disqualified person

A donee not competent to contract, and accepting property burdened by any obligation is not bound by his acceptance But if after becoming competent to contract and being aware of the obligation he retains the property given he becomes so bound

Illusrations

(A [illegible] o shares in [illegible], a [illegible] t of the shares [illegible] ccept the shares

(*b*) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term and which is more than the house can be let for, gives to B the lease and also as a separate and independent transaction a sum of money B refuses to accept the lease He does not, by this refusal forfeit the money

Universal donee

128 Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by "and liabilities of" the donor at the time of the gift to the extent to the property comprised therein

* Inserted by Act XX of 1929

Amendment —The scope of this section is made clear by the addition of the word liabilities' after the word 'debts A donee should be liable to the extent of the property in his hands not only for the debts of the donor, but also for the other liabilities (Hunter s Introduction to Roman Law, p 150)—*Report of the Special Committee*

Saving of donations *mortis causa* and Mahomedan Law

129 Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Mahomedan Law *

provisions of section 123 section 129 saves all relating to [illegible] al principle [illegible] ment of [illegible] of the word 'Buddhist from the section We [illegible] and Buddh st law —*Report of the Special Committee*

CHAPTER VIII †

OF TRANSFERS OF ACTIONABLE CLAIMS

Transfer of actionable claim

130 (1) The transfer of an actionable claim 'whether with or without consideration ‡ shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent § and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor whether by way of damages or otherwise shall vest in the transferee, whether such notice of the transfer as is hereinafter provided, be given or not

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would but for such instrument of transfer as aforesaid have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer, or has received express notice thereof as hereinafter provided) be valid as against such transfer

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid sue or institute proceedings for the same in his own name without obtaining the transferor s consent to such suit or proceedings and without making him a party thereto

Exception —Nothing in this section applies to the transfer of a marine or fire policy of insurance

Illustrations

(*i*) A owes money to B who transfers the debt to C B then demands the debt from A, [illegible] pays B

(*ii*) A [illegible] to a Banl [illegible] is entitled to receive the amount of the policy and to sue on it without the concurrence of A s executor, subject to the prov so in sub section (1) of section 130 and to the provisions of section 132

Actionable claim —Actionable claim refers only to the claims capable of enforcement at the time of assignment by a suit in the Civil Court It does not include a claim in respect of which the cause of action had not arisen at the time of the transfer, but which in future will mature into a claim so as to be enforceable

* Certain words after this repealed by Act XX of 1929 have been omitted This amendment is not to have retrospective operation

† Chapter VIII has been substituted for the original Chapter by the Transfer of Property Act (II of 1900) s 4

‡ Added by Act XX of 1929

§ Certain words after this repealed by Act XX of 1929 have been omitted

at once , in other words a claim could not be treated as an actionable one unless at the date of the transfer an action could have been brought therein 18A 265 (F, B)=A W N 1890, 80 This section covers transfers of actionable claims by way of security as well as absolute transfers thereof 17 C W N 201 (P C) Under this section, the transfer of an actionable claim can only be made by an instrument in writing 9 M L T 102=9 Ind Cas 287 Title cannot pass by admission or relinquishment when the statutes require a deed of transfer 16 C L J 436=16 Ind Cas 440 The words 'instruments in writing in this section do not mean a document concluded in technical language in any particular form What is intended is that the transfer should be made in writing and it is sufficient if the intention of the creditor to transfer the debt due to him to the transferee can be gathered from the writing *47 Ind Cas 749*

Amendment—*The words 'notwithstanding anything contained in section 123'* were inserted in the section by the Transfer of Property (Amendment) Act XXVIII of 1925 The object was to give effect to representations made by insurance companies that it involved considerable hardship when a gift was to be made of a life pol... nder sect on 123 s ch a gift could only be made by a registered instru
hether these words applied to a gift of an ac
a recent Bombay case it was contended that
s where, prior to the amending Act, a gift of
... sect on 123 ,
and as a section 123 did ... t apply
to Muhammadan gifts ... ombay
We do not think it desir ... madans
f the present rule which requires a writing
n In fact, in a large majority of cases a
by a writing as in the case of gifts of the
*the words "notwithstanding anything con*tained in section 123 we propose to omit them and insert instead the words 'whether with or without consideration" after the words 'the transfer of an actionable claim —*Report of the Special Committee*

Notice to be in writing signed

131 Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee

Notes—Where the notice given by the transferor did not contain the address of the transferee it was held that such notice was not sufficient under this section 9 Bom L R 838 Notice is not a condition precedent to the validity of the transfer of a debt contemplated by this section 10 A 20 The words 'otherwise aware of the transfer' meant aware of the transfer in some cases similar to that of being a *party to it* 2 C P L R 1 *A decree is not a debt* 2 Bom L R 414=24 B 502; 12 C 610 The provision of this section before its amendment in 1900 was applicable to cases of assignment of mortgage debts 13 C L J 641

Liability of transferee of actionable claim

132 The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date *of the transfer.*

Illustrations

(*i*) A transfers to C a debt due to him by B A being then indebted to B, C sues B for the debt due by B to A In such suit B is entitled to set off the debt due by A to him , although C was unaware of it at the date of such transfer

(*ii*) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled B assigns the bond to C for value and without notice of such circumstances C cannot enforce the bond against A

Notes—Before the passing of the Transfer of Property Act, it was the assignee of the debt upon whom it was incumbent for his own protection to give notice of the assignment to the debtor In the Act no provision is made for the assignee giving notice in any particular way All that is required is that the debtor shall

become aware of the transfer When he is aware of it it is binding on him 21 B 60

133 Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration

Warranty of solvency of debtor

134 Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery , secondly, in or towards satisfaction of the amount for the time being secured by the transfer , and the residue, if any, belongs to the transferor or other person entitled to receive the same

Mortgaged debt

Notes —The holder of a charge on a debt due to his debtor by way of security for his own loan is a transferee of an actionable claim and entitled to recover the debt from the transferor s debtor 7 M L T 125=5 Ind Cas 834

135 Every assignee, by endorsement or other writing of a policy of marine insurance, or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself

Assignment of rights under marine or fire policy of insurance

136 No Judge legal parctitioner or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive, any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance or at the instance of any person claiming by or through him any actionable claim, so dealt with by him as aforesaid

Incapacity of officers connected w th Courts of Justice

Notes —A decree is not an actionable claim within the definition of an actionable claim in the Transfer of Property Act A transfer of a decree to a pleader is therefore not invalid by virtue of this section 40 M L J 124

137 Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures or to instruments which are for the time being by law or custom, negotiable, or to any mercantile document of title to goods

Saving of negotiable instruments &c

Explanation —The expression, "mercantile document of title to goods," includes warehouse-keeper s certificate, railway receipt . of goods, and any other document used in . as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented

Notes —Railway receipts are not negotiable by law and are not rendered negotiable by this section This section merely provides that the methods of assign ertain specified docum 68 Ind Cas 695 see 38 B 225 , 40 B

THE SCHEDULE.

SEE SECTION 2

(a) STATUTES

Year and chapter	Subject	Extent of repeal
27 Hen VIII, c 10	Uses	The whole.
13 Eliz, c 5 .	Fraudulent conveyances	The whole
27 Eliz, c 4 ...	Fraudulent conveyances	The whole
4 Wm & Mary c 16	Clandestine mortgages...	The whole

(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

IX of 1842 .	Lease and realease ...	The whole
XXXI of 1854 ..	Modes of conveying land	Section 17
XI of 1855	Mesne profits and improvements ..	Section 1; in the title the words "to mesne profits and" and in the preamble "to limit the liability for mesne profits and"
XXVII of 1866 ..	Indian Trustees Act ..	Section 31.
IV of 1872 ...	Punjab Laws Act .	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806
XX of 1875 ..	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806
XVIII of 1876 ...	Oudh Laws Act .	So far as it relates to Bengal Regulation XVII of 1806
I of 1877 ...	Specific Relief Act ...	In sections 35 and 36, the words "in writing"

(c) REGULATIONS

Bengal Regulation I of 1798 ..	Conditional sales ..	The whole Regulation
Bengal Regulation XVII of 1806 ..	Redemption ...	The whole Regulation
Bom Regulation V of 1827 ..	Acknowledgment of debts, interest, mortgagees in possession	Section 15

THE TRANSFER OF PROPERTY VALIDATING ACT, 1917

ACT NO XXVI OF 1917

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 27TH SEPTEMBER, 1917.

An Act to validate certain transfers of property made prior to the 1st of January, 1915

WHEREAS it is expedient to validate certain transfers of property made prior to the 1st of January, 1915, It is hereby enacted as follows —

Short title and extent

1. (1) This Act may be called the Transfer of Property (Validating) Act, 1917.

(2) It shall extend, in the first instance, to the United Provinces of Agra and Oudh, provided that the Governor General in Council may, by notification in the *Gazette of India*, extend it to any other part of British India specified in the notification

Validation of certain transfers made prior to the first of January, 1915

2 Where a mortgage or gift purports to have been effected by an instrument executed prior to the 1st of January, 1915, and such instrument is required by the Transfer of Property Act, 1882,* to be attested, such mortgage or gift shall not be deemed to be invalid by reason only that any person who purported to attest such instrument as a witness did not see the executant sign it provided that such person before signing his name on the instrument received from the executant a personal acknowledgment of his signature to the same

Restoration of certain claims

3 Where a claim under any such instrument executed prior to the 1st of January, 1915, has been wholly or in part dismissed, rejected or withdrawn, after the 30th day of July, 1912, and before the commencement of this Act, in a Court of first instance or of revision or appeal, by reason only of the fact that some person who purported to attest such instrument as a witness on having received before signing his name thereon a personal acknowledgment from the executant of his signature to the same, did not see the executant sign it, the case may, if the dismissal, rejection or withdrawal has had the effect of invalidating in whole or in part, the said instrument as between persons claiming thereunder, be restored on review in accordance with the procedure provided by the Code of Civil Procedure, 1908, for review of judgments on application in writing made within six months from the commencement of this Act, and on such restoration the provisions of section 2 shall apply to such instrument.

Provided nevertheless—

(1) that every Court to whom such an application is made shall have discretion to refuse the same if it is of opinion that such restoration would prejudice the rights of any transferee for value in good faith under any transfer made subsequent to the said 30th day of July, 1912,

(2) that in the event of a decree being passsed upon such application in favour of the applicant or his legal representative, interest shall only be allowed under such instrument at the contractual rate up to the date of the original dismissal, rejection or withdrawal of such claim, and for a period of six months threrefrom, and at the rate of 6 per cent., thereafter until realization, and

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* Act IV of 1882

(3) that in the event of the case being so restored, the Court shall be bound by the finding of the former Court, by or before whom the case was dismissed, rejected or withdrawn, on any issue of fact which was heard and finally determined by it

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THE INDIAN TREASURE TROVE ACT, 1878

ACT NO. VI OF 1878 *

[RECEIVED THE G G S ASSENT ON THE 13TH FEBRUARY, 1878]

An Act to amend the law relating to Treasure trove

Preamble

WHEREAS it is expedient to amend the law relating to treasure trove, It is hereby enacted as follows —

Preliminary

Short title

1 This Act may be called 'The Indian Treasure-trove Act, 1878'

Extent

It extends to the whole of British India †

2 [*Repeal of enactments*] *Repealed by the Repealing and Amending Act (XII of 1891)*

Interpretation clause

3 In this Act—

Treasure

" of an value hidden

"Collector"

"Collector" means (1) any [a district, and (2) any officer appointed by the Local Government to perform the functions of a Collector under this Act

Owner

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto to treasure in such land or thing he shall, for the purposes of this Act, be deemed to be the owner of such land or thing

Procedure on finding Treasure

Notice by finder of treasure

4 Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

(*a*) of the nature and amount or approximate value of such treasure,

(*b*) of the place in which it was found,

(*c*) of the date of the finding,

and either deposit the treasure in the nearest Government treasury, or give the Collector such security as the Collector thinks fit to produce the treasure at such time and place as he may from time to time require.

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* For the Statement of Objects and Reasons, see the *Gazette of India*, 1877, Pt. V, p 1463, for discussions in Council, see *Ibid* Supplement, pp 1288 and 1376, *Ibid* 1878 pp 207 and 287

† Certain words after this having been repealed by Act X of 1914 have been omitted

Tenders—Where coolies while engaged by their employers discovered in t presence of their employers and several others, a box which, when opened bef them revealed treasure of value and the box was removed by one of the employ who secretly disposed of them and the coolies were prosecuted under s 20 *H* that the coolies were 'finders within the meaning of this section 27 M L. J 477

Notification requiring claimants to appear

5 On receiving a notice under section 4, the Collector shall, after mak such enquiry (if any) as he thinks fit, take t following steps (namely) —

(*a*) he shall publish a notification in such manner as the Local Gover ment from time to time prescribes in this behalf, to the effect that on a certa date (*mentioning it*) certain treasure (*mentioning its nature, amount an a proximate value*) was found in a certain place (*mentioning it*), and requir all persons claiming the treasure, or any part thereof, to appear personally by agent before the Collector on a day and at a place therein mentioned su day not being earlier than four months or later than six months, after the da of the publication of such notification ,

(*b*) [illegible]

Forfeiture of right on failure to appear

6 Any person having any right to such treasure or any part thereof owner of the place in which it was found or othe wise, and not appearing as required by the noti cation issued under section 5, shall forfeit su right.

Matters to be enquired into and determined by the Collector

7 On the day notified under section 5 t Collector shall cause the treasure to be produc before him, and shall enquire as to and dete mine—

(*a*) the person by whom the place in which and the circumstances und which, such treasure was found , and

(*b*) as far as is possible, the person by whom, and the circumstances und which, such treasure was hidden

Time to be allowed for suit by person claiming the treasure

8 If, upon an enquiry made under section 7, the Collector sees reason believe that the treasure was hidden within o hundred years, before the date of the finding a person appearing as required by the said no fication and claiming such treasure or by sor other person under whom such person claims, the Collector shall make an ord adjourning the hearing of the case for such period as he deems sufficient, allow of a suit being instituted in the Civil Court by the claimant to establi his right

When treasure may be declared ownerless

9 If, upon such inquiry the Collector se no reason to believe that the treasure was hidden , or

if, where a period is fixed under section 8, no suit is instituted as aforesa within such period to the knowledge of the Collector , or

if such suit is instituted within such period and the plaintiff's claim finally rejected

the Collector may declare the treasure to be ownerless

Appeal against such declaration

Any person aggrieved by a declaration made under this section may appe against the same within two months from th date thereof to the Chief Controlling Revenu authority

Subject to such appeal every such declaration shall be final and conclusive

10 When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been founded in manner hereinafter provided

Proceedings subsequent to declaration

11 When a declaration has been made in respect of any treasure as afore said and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof

When no other person claims as owner of place, treasure to be given to finder

12 When the declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such trea and the claim c the finder the the treasure between the finder and the person so claiming according to the following rule (namely) —

When only one such person claims and his claim is not disputed, treasure to be divided

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three fourths of the treasure shall be allotted to such finder and the residue to such person If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith

Provided that the Collector may in any case, if he thinks fit, instead of dividing any treasure as directed by this section—

(*a*) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be, or

(*b*) sell such treasure or any portion thereof by public auction, and divide the sale proceeds between the parties according to the rule hereinbefore prescribed

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of ... found such division shall not be made until a an appeal having been presented un le has been so rejected, or when an appeal has been dismissed

When the Collector has made a division under this section he shall deliver to the parties the portions of such treasure, or the money in lieu thereof to which they are respectively entitled under such division

and shares to be delivered to parties

13 When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court

In case of dispute as to ownership of place, proceedings to be stayed

14 Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right, and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants

Settlement of such dispute

15 If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall subject to the provisions of section 12, divide the treasure between him and the finder

and division thereupon

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

16 The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion together with one fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons, and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with as far as may be, as if it were such treasure or portion

Power to acquire the treasure on behalf of Government

17 No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred

Decision of Collector final' and no suit to lie against him for acts done *bona fide*

18 A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure* on a Civil Court for the trial of suits

Collector to exercise powers of Civil Court

19 The Local Government may, from time to time, make rules consistent with this Act, to regulate proceedings hereunder

Power to make rules

Such rules shall, on being published in the Local Gazette have the force of law

Penalties

20 If the finder of any treasure fails to give the notice or does not either make the deposit or give the security, required by section 4, or alters or attempts to alter such treasure so as to conceal its identity the share of such treasure or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on finder failing to give notice etc

and he shall on conviction before a Magistrate be punished with imprisonment for a term which may extend to one year, or with fine or with both

21 If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 20 the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on owner abetting offence under section 20

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine or with both

SCHEDULE

[*Repealed by the Repealing and Amending Act* (*XII of 1891*)]

* See new Act V of 1908

THE INDIAN TRUSTEES ACT, 1866.*

ACT NO. XXVII OF 1866

RECEIVED THE G G's ASSENT ON 24TH OCTOBER, 1866.

An Act to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable

Preamble

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of movable and immovable property in British India vested in mortgagees and trustees, in cases to which English law is applicable, It is hereby enacted as follows —

Notes —This Act applies to a trust in which the trustees and the *cestuis que trustees* are all Hindus in so far as the trust is not inconsistent with Hindu Law—32 C 143

1 [*Repealed by Act XIV of 1870*]

Interpretation clause

2. In this Act, unless there be something repugnant in the subject or context,—

"Immovable property" shall extend to and include messuages, tenements, hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein

"stock" shall mean any fund, annuity or security transferable in books kept by any company or society established, or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein It shall also include shares in ships registered under the Merchant Shipping Act, 1854, or at any port in British India †

"hold" and "holding" shall be applicable to any vested estate, whether for life or of a greater or less description, in possession, futurity or expectancy in any immovable property

"contingent right," as applied to immovable property shall mean a contingent or executory interest or possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent

"convey" and "conveyance," applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another immovable property which such person holds, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or disposing or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of Act XXXI of 1854 (*to simplify the modes of conveying land in cases to which the English law is applicable*)

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* Act XXVII of 1866 applies only to the Lower Provinces, the North Western Provinces the Presidencies of Madras and Bombay and the Punjab It is mainly founded on 13 and 14 Vict, c 60, and 15 and 16 Vict, c 55

† ... Scheduled Districts Act (XIV of 1874) in Manbhum, and Pargana Dhalbhum and the *Gazette of India* 1881, pt I p 504

"Transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another

"High Court" shall mean every Court now or hereafter established under the Statute 24 & 25 Vict, cap 104, "and also the Chief Courts of Oudh and Sindh"*† or such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the senior Judge ‡ as the case may be, to entertain applications and make orders under this Act.

"Trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, the words "trust" and "trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person

"Lunatic" shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs

"Person of unsound mind" shall mean any person not a minor who, not having been found to be lunatic, shall be incapable from infirmity of mind to manage his own affairs

In the case of a Will made or an intestacy occurring before the first day of January, 1866, § "heir" shall mean the person claiming an interest in the immovable property of a deceased person under the laws concerning descent applicable to such property and "devisee" shall, in addition to its ordinary signification mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the immovable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent

In the case of a Will made or an intestacy occurring on or after the first day of January, 1866§, 'heir' shall mean any person claiming an interest in the immovable property of a deceased person under the rules for the distribution of an intestate's estate, and "devisee" shall mean any person taking immovable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immovable property, not as entitled thereto under the said rules but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession

'mortgage' shall be applicable to every estate or interest in immovable or movable property which would in the High Court be deemed merely a security for money

"person" shall include any company or association, or body of persons whether incorporated or not ||

High Court to have jurisdiction in what cases

3. The powers and authorities given by this Act to the High Court shall and may be exercised only in cases to which the English law is applicable, and may be exercised with respect to property within the local limits of the extraordinary original civil jurisdiction of the said Courts respectively

Notes —The High Court may exercise the summary powers conferred upon it by the Trustees Act (XXVII of 1866) in the case of Hindu Trust This section which [illegible] be [illegible] to [illegible] law [illegible] ally

* Inserted by Act 32 of 1925 and 34 of 1926

† [illegible] d

‡ [illegible]

§ [illegible]

|| [illegible]

exclude the Act in any case in which an Act of the Indian legislature has any *bearing*—*S B 154*

4. When any lunatic or person of unsound mind shall hold any *immovable property upon any trust or by way of* mortgage, it shall be lawful for the High Court to make an order that such property be vested *in such* person or persons in such manner and for such estate as the said Court shall direct, and the order shall have the *same effect as if the* trustee or mortgagee had been sane, and had duly executed *a conveyance of the* property in the same manner for the same estate*.

High Court may convey estates of lunatic trustees and mortgagees,

5 When any lunatic or person of unsound mind shall be entitled to any contingent right in any immovable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or *disposing of the same to* such person or persons as the said High Court shall direct, and the order shall *have the same effect* as if the trustee or mortgagee had been sane, and had duly *executed* a deed so releasing or disposing of the contingent right †

and may convey contingent rights

6 When any lunatic or person of unsound mind shall be solely entitled to any stock or Government securities, *or to any thing in* action upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, *or to receive the dividends*, interest or income thereof, *or* to sue for and recover such thing in action or any interest in respect thereof

High Court may transfer stock or Government securities of lunatic trustees and mortgagees

and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or Government securities, or thing in *action, upon any trust or by way of mortgage*, it shall be lawful *for* the said Court to make an order vesting the right to transfer such stock or Government *securities*, or to receive the dividends, *interest* or *income* thereof, or to sue *for* and recover such thing in action, or any interest in respect thereof, either *in such* person or persons so jointly entitled as aforesaid, or in such last mentioned person or persons together with any other person or persons the said *High* Court may appoint ‡

7 When any stock or Government securities shall be standing in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when anything in action shall be vested in any lunatic or person of unsound mind, as the executor or administrator of a deceased person, it shall be lawful for the High Co[illegible] ...ght to transfer such stock or Government ... interest or income thereof, or to sue for ...or any interest in respect thereof, in any ... persons the said Court may appoint §

Power to transfer stock or Government securities of deceased persons

8 Whenever any minor ‖ shall hold any immovable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such [illegible]

and the order shall have the s[illegible]

High Court may convey estates of minor trustees and mortgagees

* Compare 13 & 14 Vict, c 60, s 3
† Compare 13 & 14 Vict, c. 60, s 4
‡ Compare 13 & 14 Vict, c. 60, s 5
§ Compare 13 & 14 Vict, c 60, s 6
‖ See Act IX of 1875

attained his majority, and had duly executed a conveyance of the property in the same manner of the same estate *

9 Where any minor shall be entitled to any contingent right in any immovable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct, and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right †

Contingent rights of minor trustees and mortgagees

10 When any person solely holding any immovable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the same manner and for the same estate ‡

High Court may convey estate of trustee out of jurisdiction of Court

11 When any person or persons shall hold any immovable property in trust jointly with a person not within the jurisdiction of the High Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last mentioned person or persons together with any other person or persons in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the trustee out of the jurisdiction or who cannot be found, had duly executed a conveyance of the property in the same manner for the same estate §

High Court may make order where persons hold immovable property in trust jointly with persons out of jurisdiction

12 When any person solely entitled to a contingent right in any immovable property upon any trust shall be out of the jurisdiction of the High Court or cannot be found, it shall be lawful for the said Court to make an order, wholly releasing such property from such contingent right or disposing of the same to such person or persons as the said Court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right ||

Contingent rights of trustees

13 When any person jointly entitled with any other person or persons to a contingent right in any immovable property upon any trust shall be out of jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction or who cannot be found to person or persons so jointly entitled as aforesaid, or to such last mentioned person or persons together with any other person or persons, and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right ¶

High Court may make order where persons jointly entitled with others out of jurisdiction to contingent right in immovable property

14 Where there shall have been two or more persons jointly holding any immovable property upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons,

When uncertain which of several trustees survived

* Compare 13 & 14 Vict, c 60 s 7
† Compare 13 & 14 Vict., c 60, s 8
‡ Compare 13 & 14 Vict, c 60, s 9
§ Compare 13 & 14 Vict, c 60 s 10
|| Compare 13 & 14 Vict, c 60 s 11
¶ Compare 13 & 14 Vict, C 60 s 12

in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in the same manner for the same estate *

When uncertain whether last trustee living or dead

15 Where any one or more person or persons shall have held any immoveable property upon any trust, and it shall not be known as to the trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate, as the said Court shall direct, and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate †

When trustee dies without heir

16 When any person holding any immovable property upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate, as the said Court shall direct, and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the property in the same manner for the same estate ‡

Contingent right of unborn trustee

17 When any immovable property is subject to a contingent right in an unborn person, or class of unborn persons who upon coming into existence would in respect thereof hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or person the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property §

Power to make order for vesting estate on refusal or neglect of trustee to convey or release

18 In every case where any person holds or shall hold jointly or solely any immovable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly authorized agent of such last mentioned person, req [illegible] or to release such contingent right, it [illegible] said Court shall be satisfied that [illegible] to convey the said property for the space of twenty eight days after such de[illegible] to make an order vesting such property in such person or persons, in such manner and for such estate, as the Court shall direct, or releasing such contingent right in such manner as the High Court shall direct, and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate ‖

Power to convey in place of mortgagee

19 When any person to whom any immovable property has been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person

* Compare 13 & 14 Vict, c 60, s 13
† Compare 13 & 14 Vict, c 60 s 14
‡ Compare 13 & 14 Vict, c. 60 s 15
§ Compare 13 & 14 Vict, c. 60, s 16
‖ Compare 15 & 16 Vict. c. 55, s 2

entitled to receive the same, or such last mentioned person shall consent to an order for the re conveyance or vesting of such property, then in any of the following cases it shall be lawful for the High Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, that is to say,—

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found

when an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such property, or a duly authorized agent of such last mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last mentioned person

when it shall be uncertain which of several devisees of such mortgagee was the survivor

when it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead ,

when such mortgagee shall have died intestate as to such property and without an heir, or shall have died and it shall not be known who is his heir or devisee

And the order of the said High Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be had duly executed a conveyance of the property in the same manner and for the same estate *

Power to appoint person to convey in certain cases

20 In every case where the High Court shall under the provisions of this Act, be enabled to make an order having the effect of a conveyance of any immovable property, or having the effect of a release or disposition of the contingent right of any person or p rsons born or unborn, it shall also be lawful for the High Court, should it be deemed more convenient, to make an order appointing a person to convey such property, or release or dispose of such contingent right ,

and the conveyance or release or disposition of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed,
ising or disposing of the
in the particular case,

In every case where the High Court shall, under the provisions of this Act be enabled to make an order vesting in any person or persons the right to trans fer any stock transferable in the books of any company or society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient, to make an order directing the secretary or any officer of such company or society at once to transfer, or join in transferring, the stock to the person or persons to be named in the order ,

and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto †

Notes —As to appointment of persons to convey property on behalf of persons out of the jurisdiction and under disabilities—*Vide*, 7 C 32

* Compare 13 & 14 Vict , c 60, s 19 † Compare 13 & 14 Vict , c 60, s 20

21 When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last mentioned person or persons together with any person or persons the said Court may appoint

When trustees of stock or Government securities joined with trustees out of jurisdiction

When any sole trustee of any stock, Government securities or thing in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.*

22. Where any sole trustee of any stock, Government securities or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the High Court to make an order vesting the sole right to transfer such stock or Government securities or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint †

When trustee of stock, &c, refuses to transfer

23 Where any one of the trustees of any stock, Government securities or thing in action shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action according to the direction of the person, absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities, or thing in action or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees ‡

When one of several trustees of stock, etc, refuses to transfer or receive and pay over dividends

24 When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest or income thereof,

When stock etc, standing in name of deceased person

* Compare 13 and 14 Vict, c 60, s 2? † Compare 13 and 14 Vict, c 60, s 23
‡ Compare 13 and 14 Vict, c 60, s 24

according to the direction of the person absolutely entitled thereto, for the space of twenty eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint *

Effect of order vesting legal right to transfer stock, &c

25 Where any order shall have been made under this Act vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest or income thereof, to the extent and in conformity with the terms of such order

Obligation to comply with requisitions of person invested

All companies and associations whatever, and all persons shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the persons in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made

Indemnity

Termination of powers of person replaced

After notice in writing of any such order of the High Court concerning any stock of Government securities shall have been given, it shall not be lawful for any company or association, or any person having received such notice to act upon the requisition of the person in whose place an appointment shall have been made in any matter relating to the transfer of such stock or Government securities or, the payment of the dividends, interest or income thereof †

Effect of order vesting legal right in thing in action

26 Where any order shall have been made under this Act by the High Court vesting the legal right to sue for or recover anything in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons so appointed to carry on, commence and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action ‡

On neglect to transfer stock, &c, for twenty eight days order made vesting right to transfer in such person as Court appoints

27 Where any person shall neglect or refuse to transfer any stock or Government securities or to receive the dividends interest or income thereof, or to sue for or recover anything in action, or any interest in respect thereof, for the space of twenty eight days next after an order of the High Court for that purpose shall have been

* Compare 13 & 14 Vict c 60, s 25 † Compare 13 & 14 Vict 60, s 26
‡ Compare 13 & 14 Vict c 60, s 27

21 When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive th dividends, interest or income thereof or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last mentioned person or persons together with any person or persons the said Court may appoint

When trustees of stock or Government securities joined with trustees out of jurisdiction

When any sole trustee of any stock, Government securities or thing in action shall be out of the jurisdiction of the said Court, or cannot be found or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.*

22. Where any sole trustee of any stock, Government securities or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the High Court to make an order vesting the sole right to transfer such stock or Government securities or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint †

When trustee of stock, &c, refuses to transfer

23 Where any one of the trustees of any stock, Government securities or thing in action shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action according to the direction of the person, absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof or to sue for and recover such thing in action, in the other trustee or trustees of the said stock, Government securities, or thing in action or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees ‡

When one of several trustees of stock, etc, refuses to transfer or receive and pay over dividends

24 When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest or income thereof,

When stock etc, standing in name of deceased person

* Compare 13 and 14 Vict, c 60, s 22 † Compare 13 and 14 Vict, c 60, s 23
‡ Compare 13 and 14 Vict, c 60, s 24

according to the direction of the person absolutely entitled thereto, for the space of twenty eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, in any person or persons whom the said Court may appoint *

Effect of order vesting legal right to transfer stock, &c

25 Where any order shall have been made under this Act vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest or income thereof, to the extent and in conformity with the terms of such order

Obligation to comply with requisitions of person invested

All companies and associations whatever, and all persons shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations, or persons would have been bound and compellable to comply with th requisitions of the persons in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition

Indemnity

of such person or persons so appointed as the would have been the requisition of the person in whose place made

Termination of powers of person replaced

After notice in writing of any such order of the High Court concerning any stock of Government securities shall have been given it shall not be lawful for any company or association or any person having received such notice to act upon the requisition of the person in whose place an appointment shall have been made in any matter relating to the transfer of such stock or Government securities or, the payment of the dividends interest or income thereof †

Effect of order vesting legal right in thing in action

26 Where any order shall have been made under this Act by the High Court vesting the legal right to sue for or recover anything in action or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons so appointed to carry on, commence and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action ‡

On neglect to transfer stock, &c, for twenty eight days order made vesting right to transfer in such person as Court appoints

27 Where any person shall neglect or refuse to transfer any stock or Government securities or to receive the dividends interest or income thereof, or to sue for or recover anything in action or any interest in respect thereof, for the space of twenty eight days next after an order of the High Court for that purpose shall have been

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* Compare 13 & 14 Vict c 60, s. 25 † Compare 13 & 14 Vict 60 s 26
‡ Compare 13 & 14 Vict. c 60, s 27

served upon him it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint *

Similar order on like neglect by executor

28 When any stock or G sole or sfer such stock or Government securities, or to receive the dividends, interest, or income thereof for the space of twenty eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint †

Legal right to transfer stock to vest in person appointed by High Court

29. When any order being or purporting to be under this Act shall be made by the High Court, vesting the right to any stock or Government securities, or vesting the right to transfer any stock or Government securities, or vesting the right to call for the transfer of any stock or Government securities in any person or persons in every such case the legal right to transfer such stock or Government securities shall vest accordingly,

Powers of person appointed

and the person or persons so appointed shall be authorised and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock or Government securities into his or their own name or names or otherwise, to the extent and in conformity with the terms of the order

Obligation to comply with his requisitions

All companies and associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies associations or the persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made ‡

Power to make order for transfer or receipt of dividends, of stock, etc in name of min or trustees

30 When any minor shall be solely entitled to any stock or Government securities upon any trust, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends interest or income thereof

When any minor shall be entitled jointly with any other person or persons to any stock or Government securities, upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof either in the person or persons jointly entitled with the minor, or in him or them together with any other person or persons the said Courtt may appoint §

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*Compare 15 & 16 Vict., c 55, s 4

† Compare 15 & 16 Vct, c 55 s 5

‡ Compare 15 and 16 V ct, 55, s 6

§ Compare 15 and 16 Vict, c. 55, s 3.

When decree made for sale of immovable property for payment of debts

31 When a decree or order shall have been made by the High Court directing the sale of any immovable property for the payment of the debts of a deceased person, every person holding such property, or entitled to a contingent right therein, as heir, or under the Will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act:

and the High Court is hereby empowered to make an order wholly discharging the contingent right under the Will of such deceased debtor, of any unborn person *

Holding immovable property the sale of which has been ordered by High Court

32 When any decree or order shall have been made by the High Court, whether before or after the passing of this Act, directing the sale of any immovable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, shall be deemed so to hold or be entitled [illegible] this Act.

Order for vesting estate in lieu of conveyance by party to suit in order to carry out sale

[illegible] rt, if the said Court [illegible] for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct.

Effect of order

Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.†

Court to declare what parties are trustees of immovable property comprised in suit, and as to interests of persons unborn

33 Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immovable property, or for the partition or exchange of any immovable property, or generally when any decree shall be made for the conveyance of any immovable property, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such property, or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the Will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act

Thereupon it shall be lawful for the High Court to make such order or orders as to the estates, rights and interests of such persons, born or unborn, as the said Courts might under the provisions of this Act, make concerning the estates, rights, and interes s of trustees born or unborn ‡

* Compare 13 and 14 Vict, c 60, s 29

S 31 is repealed in places to which the Transfer of Property Act, 1882, extends [illegible]

[illegible] 30

34 It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities, or thing in action vested under the provisions of this Act shall be exercised and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced *

Power to direct how right to transfer stock shall be exercised

35 In all cases in which it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult or impracticable so to do without the assistance of the High Court, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or trustees or not at the time of making such order, and, if there be such trustee or trustees, either in substitution for or in addition to him or them †

Power to Court to make order appointing new trustees

The person or persons who, upon the making of such order shall be trustee or trustees shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted ‡

Powers of new trustees

Notes—The Courts in this country ought to refuse jurisdiction under this section on a mere application alleging misconduct or any other cause when the trustees whom it is sought to remove are willing to act and refer the applicant to suit—6 N W P 54, see also 54 Ind Cas 455

36 It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to direct that any immovable property subject to the trust shall vest in the person or persons who, upon the appointment, shall be the trustee or trustees, for such estate as the Court shall direct

Power to Court to vest immovable property in new trustee

Such order shall have the same effect as if the person or persons who, before such order, was or were the trustee or trustees (if any) had duly executed all proper conveyances of such property for such estate §

37 It shall be lawful for the High Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or Government securities subject to the trust or to receive the dividends, interest or income thereof, or to sue for or recover anything in action subject to the trust, or any interest in respect thereof, in the person or persons who upon the appointment, shall be the trustee or trustees §

Power to Court to vest right to sue in new trustees

38 Any such appointment by the High Court of new trustees, and any such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee, than an appointment of new trustees under any power for that purpose contained in any instrument would have done ‖

Old trustees not discharged from liability

39 *An order under any of the hereinbefore contained provisions for* the appointment of a new trustee or new trustees, or concerning any immovable pro-

Who may apply

* Compare 13 and 14 Vict, c. 60, s 31 † Compare 13 and 14 Vict, c 60 s 32
‡ Compare 13 and 14 Vict., c 60 s 33 § Compare 13 and 14 Vict, c 60, s 34
‖ Compare 13 & 14 Vict, c 60 s 36

perty, stock or Government securities or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immovable property, stock, Government securities or thing in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof, and an order under any of the provisions herein before contained, concerning any immovable property, stock, Government securities, or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage *

Application may be by petition

40 When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof †

What may be done upon petition

41 Upon the hearing of any such petition, it shall be lawful for the said High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such petition to be served upon any person or persons ‡

Court may dismiss petition with or without costs

42 Upon the hearing of any such petition, it shall be lawful for the High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act §

Power to make order in cause

43 Whensoever in any cause or matter, either by the evidence adduced therein or by the admissions of the parties, or by report of one of the Judges of the Court, the facts necessary for an order under this Act shall appear to the High Court to be sufficiently proved, it shall be lawful for the said Court, either upon the hearing of the said cause or of any petition or application in the said cause or matter, to make such order under this Act ||

Orders by High Court founded on certain allegations conclusive evidence of matter contained therein

44 Whenever any order shall be made under this Act by the High Court, for the purpose of conveying any immovable property or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the High Court, or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee, was the survivor, whether the last trustee, or the heir, or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died, and it is not known who is his heir or devisee, then in any of such cases the fact that the High Court has made an order upon such an allegation shall be conclusive

* Compare 13 & 14 Vict, c. 60 s 37 † Compare 13 & 14 Vict, c 60, s 40.
‡ Compare 13 & 14 Vict, c 60 s 41 § Compare 13 & 14 Vict, c 60, s 42
|| Compare 13 & 14 Vict, c 60, s 43

evidence of the matter so alleged in any Court of Civil Judicature upon any question as to the legal validity of the order

Powers as to re-conveyance of *immovable property, etc*

Provided always that nothing herein contained shall prevent the High Court directing a re conveyance of any immovable property conveyed or assigned by any order under this Act, or a re disposition of any contingent right conveyed or disposed of by such order, and it shall be lawful for the said Court to direct any of the parties to any suit concerning such property or contingent right to pay any costs occasioned by the order under this Act when the same shall appear to have been improperly obtained *

Trustee of charity [illegible]

45 It shall be lawful for the High Court to exercise the power herein conferred for the purpose of vesting any immovable property, stock, Government securities or [illegible] y charity or society, over which [illegible] jurisdiction upon suit duly insti[illegible] have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court or by order made upon a petition to the said Court †

Money of minors and persons of unsound mind to be paid into Court

46 Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immovable property, stock, Government securities or thing in action conveyed or transferred under *this Act* it shall be lawful for the person by whom such money is payable to pay the same into the High Court, in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such minor or person of unsound mind, subject to the order or dis position of the said Court,

and it shall be lawful for the said Court upon petition in a summary way to order any money so paid to be invested in Government securities and to order payment or distribution thereof, or payment of the dividends or *interest* thereof as to the said Court shall seem reasonable ‡

Court may make decree in absence of trustee

47 Where in any suit commenced or to be commenced *in the High* Court, it shall be made to appear to the Court that diligent search and enquiry have been made after any person made a defendant who is only a trustee, to serve him with the process of the Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to it to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court and had appeared *at the hearing of such cause*

Decree not effective without service of process

Provided always that no such decree shall bind, affect, or in any wise prejudice any person against whom the same shall be made without service of process upon him as aforesaid, his heirs, executors or administrators, for or in respect of any estate, right or interest which such person shall have at the time of making such decree for his *own use or* benefit, or otherwise than as a trustee as aforsaid §

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* Compare 13 & 14 Vict, c 60, s 44
† Compare 13 & 14 Vict c 60 s 45
‡ *Compare 13 & 14 Vict c 60, s. 48*
§ Compare 13 & 14 Vict c. 60 s. 49

Orders under Act chargeable with same stamp-duty as deeds of conveyance

48 Every order to be made under this Act, which shall have the effect of a conveyance of any immovable property, or a transfer of any such stock, Government securities or thing in action as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp-duty as it would have been chargeable with if it had been a deed executed, or a transfer made by the person or persons holding such property or entitled to such stock, Government securities or thing in action

Every such order shall be duly stamped for denoting the payment of the said duty *

Costs may be paid out of estate

49. The High Court may order the costs and expenses of and relating to the petition, orders, directions, conveyances and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immovable or movable property or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper †

Power to order enquiry concerning person of unsound mind

50 Upon any petition being presented under this Act to the High Court, concerning a person of unsound mind, it shall be lawful for the said Court to make an order directing an enquiry whether such person is or is not of unsound mind, and incapable of managing himself and his affairs.

Effect of order

Such orders shall have the same effect as the like order made under section 1 of Act XXXIV of 1858 (*to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*), and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the last mentioned Act

Postponement of order pending enquiry

The High Court may postpone making any order upon the petition presented as aforesaid, until any enquiry so directed to be made shall have been finally concluded ‡

Suit may be directed

51. Upon any petition under this Act being presented to the High Court Court it shall be lawful for the said Court to postpone making any order upon such petition until the right of the petitioner shall have been declared in a suit duly instituted for that purpose §

Indemnity to persons obeying orders under Act

52 Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for any act done pursuant thereto, and it shall not be necessary for such persons to enquire concerning the property of such order, or whether the High Court has jurisdiction to make the same ‖

Execution and effect of orders

53 Any order made by the High Court under this Act, shall have the same effect, and be executed in the same manner as a decree

Short title

54 This Act may be cited as "The Indian Trustee Act, 1866"

55 *Repealed by Act of 1874*

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* Compare 15 & 16 Vict, c 55 s 13 † Compare 13 & 14 Vict. c 60, s 51
‡ Compare 13 and 14 Vict c 60, s 52 § Compare 13 and 14 Vict, c. 60, s 53
‖ Compare 15 and 16 Vict 55, s 7.

THE TRUSTEES' AND MORTGAGEES' POWERS ACT, 1866.

ACT NO XXVIII OF 1866.*

RECEIVED THE G G S ASSENT ON THE 24TH OCTOBER, 1866

An Act to give to Trustees, Mortgagees and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the Law of Property and relieve Trustees

Preamble

WHEREAS it is expedient that in cases to which English law is applicable certain powers and provisions usually inserted in settlements, mortgages, Wills and other instruments should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument, and that in such cases trustees should be relieved, It is enacted as follows —

Interpretation clause

1 In the construction of this Act, unless there be something repugnant in the subject or context,—

"Immovable property" shall include land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth

'Mortgage' shall be taken to include every instrument by virtue whereof immovable property is in any manner conveyed, pledged or charged as security for the repayment of money or money's worth lent, and to be reconveyed or released on satisfaction of the debt

"Mortgagor" shall be taken to include every person by whom any such conveyance, pledge or charge as aforesaid shall be made

'Mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, pledge or charge as aforesaid is made or transferred and

'High Court" means any Court established or to be established under Statute 24 & 25 Vict, cap 104, "and includes the Chief Courts of Oudh and Sindh' † ‡ §

Powers of Trustees for Sale, &c, and Trustees of renewable Leaseholds

Trustees empowered to sell, may sell in lots, and either by public auction or private contract

2 In all cases where, by any Will, deed or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immovable property named or referred to in, or from time to time subject to, the uses or trusts of such Will, deed or other instrument it shall be lawful for such trustees or other persons, whether such property be vested in

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* Act XXVIII has been declared to be in force in the whole of British India except the Scheduled Districts by the Laws Local Extent Act (XV of 1874), s 3

† Inserted by Acts 32 of 1925 and 34 of 1926

‡ Certain words repealed by Act 18 of 1919 have been omitted

§ Certain words after this have been repealed by Act II of 1923

them or not, to exercise such power of sale by selling such property either together or in lots, and either by public auction or private contract, and either at one time or at several times *

Sale may be made under special conditions and trustees may buy in, etc

3. It shall be lawful for the persons making any such sale to insert any such special or other stipulations either as to title or evidence of title or otherwise, in any conditions of sale, or contract for sale, as they shall think fit, and also to buy in the property or any part thereof at any sale by auction, and to rescind or vary any contract for sale, and to re sell the property which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby,

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re investment of the purchase money in the purchase of any other property or otherwise †

Trustees exercising power of sale, etc, empowered to convey

4 For the purpose of completing any such sale as aforesaid, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question in such a manner as may be necessary ‡

Money arising from sales to be laid out in manner indicated in Will, etc

5 The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the Will, deed or instrument containing the power of sale,

Until so laid out, money to be invested in Government securities

and, until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid:

Provided that if the Will, deed or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid, would have been payable or applicable in case such sale had not been made §

Powers of Mortgagees ||

Powers incident to mortgages

6 Where any principal money is secured or charged by deed on any immovable property, or on any interest therein, the person to whom such money, shall for the time being be payable, his executors, administrators and assigns, shall, at any time after the expiration of one year from the time when such principal money shall have become payable, according to the terms of the deed, or after any interest on such principal money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following

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* Compare 23 and 24 Vict, c 145, s 1
† Compare 23 and 24 Vict c 145, s 2
‡ Compare 23 and 24 Vict c 145 s 3
§ Compare 23 and 24 Vict c 145, s 4.
|| As to the application of ss 6 to 19 to certain English mortgages, see the Transfer of Property Ac (IV of 1882), s 69, as amended by Act (III of 1885), s 5.

powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely —

First a power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and re sell the property, from time to time, in like manner

Second, a power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner herein after mentioned *

Receipts for purchase money sufficient discharges

7 Receipts for purchase money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers who shall not be bound to see to the application of such purchase-money †

Notice to be given before sale

8 No such sale as last aforesaid shall be made until after six months notice in writing given to the person or one of the persons entitled to the property subject to the charge or affixed on some conspicuous part of such property,

but purchaser relieved from enquiry as to circumstances of sale

but when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given, but any person damnified by any such unauthorized exercise of such power shall have his remedy in damages against the person or persons selling ‡

Application of purchase money

9 The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows —

first—in payment of all the expenses incident to the sale or incurred in any attempted sale,

secondly—in discharge of all interests and costs then due in respect of the charge in consequence whereof the sale was made, and

thirdly, in discharge of all the principal moneys then due in respect of such charge,

and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators or assigns as the case may be §

Conveyance to purchaser

10 The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein which the person who created the charge had power to dispose of

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee simple of the property comprised therein in cases where the mortgagor could have disposed of such fee-simple at the date of the mortgage ||

* Compare 23 & 24 Vict, c 145 s 11 † Compare 23 & 24 Vict c 145 s 12
‡ Compare 23 & 24 Vict c 145 s 13 § Compare 23 & 24 Vict, c 145 s 14
|| Compare 23 & 24 Vict c 145 s 15

Owner of charge may call for title deeds and conveyance of legal estate

11 At any time after the power of sale hereby conferred shall have become exerciseable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge, all the deeds and documents, in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed or surrendered to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of,

and, where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made *

Appointment of receiver

12 Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may, from time to time, if any person or person has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no persons be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some [illegible] quire such last mentioned person or persons [illegible] as receiver, a[illegible] requisition, [illegible]

No perso[illegible]eiver merely because he is an officer of the High Court †

Receiver deemed to be the agent of the mortgagor

13 Every receiver appointed as aforesaid, shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge ‡

Powers of receiver

14 Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues and profits of the property of which he is appointed receiver, by suit, distress or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of §

Receiver may be removed, and new receivers appointed

15 Every receiver appointed as aforesaid may be removed by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time ||

Receiver to receive commission not exceeding five per cent.

16 Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges and expenses whatsoever, such a commission, not exceeding five per centum on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five per centum on such gross amount ¶

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* Compare 23 & 24 Vict, c 145, s 16 † Compare 23 & 24 Vict, c 145, s 17
‡ Compare 23 & 24 Vict, c 145, s 18 § Compare 23 & 24 Vict, c 145 s 19
|| Compare 23 and 24 Vict, c 145, s 20 ¶ Compare 23 & 24 Vict, c. 145, s 21.

17 Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire, out of the money received by him, the whole or any part of the property included in the charge which is in its nature insurable *

Receiver to insure if required

18 Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of Government revenue, and of all taxes rates and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances if any, and in the next place in payment of all interest accruing due in respect of any principal money then charged on the property over which he is receiver, or out any part thereof, and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators or assigns †

Application of money received by him

19 The powers and provisions contained in sections 6 to 18 of this Act, both inclusive, relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt ‡

This part to relate to charges by way of mortgage only

Leases

20 Where any license to do any act which without such license would create a forfeiture, or give a right to re enter under a condition or power reserved in any lease heretofore granted or to be hereafter granted, shall at any time after this Act comes into operation be given to any lessee or his assigns, every such license shall, unless otherwise expressed extend only to the permission actually given, or to any specific breach of any proviso or convenant made or to be made, or to the actual assignment, under lease or other matter thereby specifically authorised to be done but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license),

Restriction on effect of license to alien

and all rights under covenants and powers of forfeiture and re entry in the lease contained shall remain in full force, and shall be available as against any subsequent breach of covenant or condition, assignment, under lease or other matter not specifically authorized or made dispunishable by such license in the same manner as if no such license had been given, and the condition or right of re entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done §

21 Where in any lease heretofore granted, or to be hereafter granted there is or shall be a power or condition of re entry on assigning, or under letting or doing any other specified act without license, and a license at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or under let his share or interest, or to do any other act prohibited to be done without license, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or under let part only of the property, or to do any other such act as aforesaid in respect of part only of such property such license shall not operate to destroy or extinguish the right of re entry in case of any breach of the covenant

Restricted operation of partial licenses

* Compare 23 and 24 Vict c 145 s 22 † Compare 23 and 24 Vict, c 145, s 23
‡ Compare 23 and 24 Vict, c. 145 s 24 § Compare 22 and 23 Vict, c. 35, s 1

or condition by the co lessee or co lessees or owner or owners of the other shares or interests in the property or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license *

Apportionment of conditions of re entry in certain cases

22 Where the reversion upon a lease in severed, and the rent or other reservation is legally apportioned the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re entry for non payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him

Rent Charges

Release of part of land charged not to be an extinguishment

23 The release from a rent charge of part of the immovable property charged therewith shall not extinguish the whole rent charge but shall operate only to bar the right to recover any part of the rent charge out of the property released, without prejudice, nevertheless to the rights of all persons interested in the property remaining unreleased and not concurring in or confirming the release ‡

Powers

Mode of execution of powers

24 A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should he executed or attested with some additional or other form of execution or attestation or solemnity

Provided always that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument,

and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend §

Legatee in trust may raise money by sale notwithstanding want of express power in Will

25 Where, by any Will which shall come into operation after the passing of this Act, the testator shall have charged his immovable property or any sepecific portion thereof with the payment of his debts or with the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy or sum of money out of such property, it shall be lawful for the said legatee

* Compare 22 and 23 Vict c 145 s 2
† Compare 22 and 23 Vict. c. 35, s 3.
‡ Compare 23 and 24 Vict, c 35, s 10
§ Compare 22 and 23 Vict., c 35 s 12

or legatees in trust notwithstanding any trusts actually declared by the testator, to raise such debts, legacy or money as aforesaid by sale and absolute disposition by public auction or private contract, of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other,

and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper *

Powers given by last section extended to survivors legatees, etc

26. The powers conferred by the last preceding section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the Will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid †

Executors to have power of raising money, etc where there is no sufficient bequest

27 If any testator who shall have created such a charge as is described in section 25 of this Act shall not have bequeathed the property charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such Will shall have the same or the like power of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested.‡

Purchasers, etc, not bound to enquire as to powers

28 Purchasers or mortgagees shall not be bound to enquire whether the powers conferred by sections 25, 26 and 27 of this Act, or any of them shall have been duly and correctly exercised by the person or persons acting in virtue thereof §

Inheritance

Descent how traced

29 In cases of intestacies occurring before the first day of January, 1866, where there shall be a total failure of the heirs of the purchaser, or where any immovable property shall be descendable as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall descend, and the descent shall thenceforth be traced, from the person last entitled to the property as if he had been the purchaser thereof ‖

This section shall be read as part of Act No XXX of 1839 ¶ (*for the amendment of the law of inheritance*) **

Assignment of Movables and Terms for Years

Assignment to self and others

30 Any person shall have power to assign movable property now by law assignable, terms for years of immovable property and estates by *elegit*, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another ††

* Compare 22 and 23 Vict, c 35, s 14 † Compare 22 and 23 Vict, c 35, s 15
‡ Compare 22 and 23 Vict, c 35 s 16 § Compare 22 and 23 Vict, c 35 s 17
‖ Compare 22 and 23 Vict, c 35, s 19
¶ Repealed, except as to descent before 1866, by the Repealing Act No VIII of 1868
** Compare 22 and 23 Vict c 35, s 20 †† Compare 22 and 23 Vict. c 35 s 21

Purchasers

31 The *bona fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof *

Not bound to see to application of purchase money, etc

Investment of Trust funds

32 Trustees having trust money in their hands, which it is their duty to invest at interest shall be at liberty, at their discretion, to invest the same in any Government securities, and such trustees shall also be at liberty, at their direction, to call in any trust funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature

On what securities trust-funds may be invested

Provided always that no such original investment as aforesaid, and no such charge of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person †

Trustees and Executors

33 ‡ In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not,

Trustees may apply income of property of minors, etc, for their maintenance

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen

Provided always, that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year §

34 Whenever any trustee, either original or substituted, and whether appointed by any High Court or otherwise, shall die, or be six months absent from British India, or desire to be discharged from, or

Provisions for appointment of new trustees on death, etc

* Compare 22 and 23 Vict, c 35 s 23, omitting the limiting clause, 'unless the contrary shall be expressly declared by the instrument creating the trust or security"

† Compare 23 and 24 Vict, c 145, s 25

‡ Sections 33 to 37 are repealed in places to which the Indian Trusts Act (II of 1882) extend or is extended See the Indian Trust Act (II of 1882), s 2

§ Compare 23 and 24 Vict, c 145, s 26

refuse, or become unfit or incapable, to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed it shall be lawful for the person or persons nominated for that purpose by the deed, Will or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being or the acting executors or executor or administrators or administrator, of the last surviving and continuing trustee, or for the retiring trustees if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee), by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from British India, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid

Transfer of trust property to new trustees

So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust property (if any), which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustee, shall with all convenient speed be conveyed and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

Powers etc, of new trustees

Every new trustee to be appointed as aforesaid, as well before as after such conveyance or transfer as aforesaid, and also every trustee appointed by any High Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, Will or other instrument (if any) creating the trust

Appointment of Official Trustee to be a trustee

The Official Trustee may with his consent and by the order of the High Court, be appointed under this section in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee *

Notes —The Trustees' and Mortgagees' Powers Act, XXVIII of 1865 does not apply to charitable trusts S 34 of the Act is repealed wholly; there is no saving or exception in favour of charitable trusts or of trustees of properties dedicated to charity 33 B 509

Appointment in place of trustee predeceasing testator

35 The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a Will has died in the lifetime of the testator †

Trustees receipts to be discharges

36 The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof ‡

* Compare 23 and 24 Vict, c 145 s 27 † Compare 23 and 24 Vict c. 145, s 28
‡ Compare 23 and 24 Vict c 145, s 29

37 Every deed, Will or other instrument creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say,—

Every trust instrument deemed to contain clauses for indemnity and reimbursement of trustees

"that the trustees or trustee for the time being of the said deed, Will or other instrument shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker, broker or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, Will or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, Will or other instrument "*

38 It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound or submit to arbitration all debts, accounts, claims and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give and execute such agreements, instruments of composition, releases and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby †

Executors may compound, etc

39 [*Trustee, &c, making payment under power of attorney, not liable by reason of death of party giving power*] *Repealed by the Powers of attorney Act (VII of 1882), s 6*

40 Where an executor or administrator liable as such to the rents, convenants or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of the Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease, or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part, or any further part (as the case may be), of the estate of the deceased to meet any future liability under the said lease or agreement for a lease.

As to liability of executor or administrator in respect of rents, convenants or agreements

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease and having,

* Compare 23 and 24 Vict, c 145 s 30
† Compare 23 and 24 Vict c 145, s 31

where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed *

As to liability of executor, etc in respect of rents, etc, in conveyance on rent charge

41 In like manner, where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rent charge (whether any such rent be by the limitation of use grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance herein after mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance

Nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed †

As to distribution of assets of testator or intestate after notice given by executor and administrator

42. Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the High Court in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof as the case may be

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the

* Compare 22 and 23 Vict, c 35, s 27
† Compare 22 and 23 Vict c 35 s 28

hands of the person or persons who may have received the same respectively,*

43 Any trustee, executor, or administrator shall be at a liberty without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice, or direction of such Judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate

Trustee, executor etc may apply by petition to judge of High Court, for opinion, advice etc in management etc of trust property

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient

The trustee, executor, or administrator acting upon the opinion, advice, or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator, in the subject matter of the said application

Provided, nevertheless, that this Act shall not extend to indemnify any trustee, executor, or administrator, in respect of any act done in accordance with such opinion, advice or direction as aforesaid such trustee, executor or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction, and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made †

Notes —What questions can be considered under this Act, *vide* 7 B 381, see also 1· B 638, 12 Bom L R 1040

General Provisions

44 For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rent and income of immovable or movable property although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent, but the estates or interest of the parties to any such charge or incumbrance shall not be affected by the Acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein ‡

Tenants for life, etc may execute powers, notwithstanding incumbrances

45 The provisions contained in this Act shall, except as hereinbefore otherwise provided, extended only to persons entitled or acting under a deed, Will, codicil or other instrument executed after this Act comes into operation, or under a Will or codicil confirmed or revived by a codicil executed after that date, and only to property in British India and to cases to which English law is applicable §

Operation of Act

Short title,

46 This Act may be called 'The Trustees and Mortgagees Powers Act, 1865"

47 Repealed by Act XVI of 1874

* Compare 22 and 23 Vict, c. 35, s 29
† Compare 22 and 23 Vict, c 35 s 30
‡ Compare 23 and 24 Vict, c 145 s 31
§ Compare 23 and 24 Vict, c 145 s 34

THE INDIAN TRUSTS ACT, 1882

ACT NO. II OF 1882

RECEIVED THE G G S ASSENT ON THE 13TH JANUARY 1882

An Act to define and amend the law relating to Private Trusts and Trustees

Preamble

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees ; It is hereby enacted as follows —

CHAPTER I.

PRELIMINARY.

Short title, Commencement

1 This Act may de called "The Indian Trusts Act, 1882" and it shall come into force on the first day of March, 1882

Local extent

It extends, in the first instance, to the territories respectively administered by the Governor of Madras in Council, the Lieutenant Governors of the North Western Provinces, and the Punjab, the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam , and the Local Go
in the official Gazette, extend

Savings

law as to *wakf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts, to distribute prizes taken in war among the captors , and nothing in the second chapter of this Act applies to trusts created before the said day.

Extent—This Act has been extended (1) to the whole of Bombay Presidency including the Schedule Districts *Vide* Notification No 4802 Bom Gazette 1891, pt 1, p 743 , (2) these are included within the limits of Rangoon Town as from time to
gal, *Vide*
e Gazette
B & O
does

justice, equity and good c

Scope—This Act does not apply to public trusts and consequently no formalities are required by law to create them 42 M L J 258 , 100 Ind Cas 255

Repeal of enactments

2 The Statute and Acts mentioned in the schedule hereto annexed shall, to the extent mentioned in the said schedule, be repealed, in the territories to which this Act for the time being extends

Interpretation clause. 'Trusts'

3 A ' trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in, and accepted by the owner, or declared and accepted by him, for the benefit of anot
the person who reposes or d
hor of
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called
neficial

"author of the trust " "trustee" "beneficiary ' trust property ' beneficial interest "

interests" or "interest" of the beneficiary is his right against the trustee as owner of the trust property, and the instrument (if any) by which the trust is declared is called the 'instrument of trust"

'instrument of trust,

a breach of any duty imposed on a trustee, as such by any law for the time being in force, is called a 'breach of trust' and in this Act, unless there be some thing repugnant in the subject or context 'registered' means registered under the law for the registration of documents for the time being in force a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence he would have known it, or when information of the fact is given to, or obtained by, his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229, and all expressions used herein, and defined in the Indian Contract Act, 1872, shall be deemed to have the meaning respectively attributed to them by that Act

'breach of trust:

"registered" "notice

Expressions defined in Act IX of 1872

Notes—Where by a partition *karar* among brothers the share of the first defendant was augmented in consideration of an obligation imposed to him to pay Rs 250 to the widow of a deceased brother and to her daughter and there was a further recital to the effect that should he not do so the and the property allotted to his share shall be liable for the amount *Held*, that a valid trust was created under this section in as much as there was an obligation annexed to property 38 M L T (H C) 16, see also 100 Ind Cas 506, 26 L W 51, 53 M L J 679

CHAPTER II

Of the Creation of Trust

4 A trust may be created for any lawful purpose The purpose of a trust is lawful unless it is (*a*) forbidden by law, or (*b*) is of such a nature that, if permitted it would defeat the provisions of any law, or (*c*) is fraudulent, or (*d*) involves or implies injury to the person or property of another, or (*e*) the Court regards it as immoral or opposed to public policy.

Lawful purpose

Every trust of which the purpose is unlawful is void And where a trust is created for two purposes of which one is lawful and the other unlawful and the two purposes cannot be separated, the whole trust is void

Explanation —In this section, the expression 'law' includes where the trust property is immovable and situate in a foreign country, the law of such country

Illustrations

(*a*) A conveys property to B in trust to apply the profits to the nature of female foundlings to be trained up as prostitutes The trust is void

(*b*) A bequeaths property to B in trust to employ it in carrying on a smuggling business and out of the profits thereof to support A s children The trust is void

(*c*) A, while in insolvent circumstances transfers property to B in trust for A during his life and after his death to B A is declared an insolvent The trust for A is invalid as against his creditors

5 No trust in relation to immovable property is valid unless declared by a non testamentary instrument in writing signed by the author of the trust or the trustee and registered or by the Will of the author of the trust or of the trustee

Trust of immovable property

No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee

Trust of movable property

The rules do not apply where they would operate so as to effectuate a fraud

Notes—The Indian Trust Act is inapplicable to religious endowments 13 M L J 364 *vide* also 25 P L R 1903 = 75 P R 1903 Reading ss 5 and 6 together, the legislature seems to have meant that a specific oral declaration of trust on point (*a*) to (*d*) would be enough to create a trust without transfer whether the author *was himself the trustee 10 Bom L R 1209* See also 13 Bom L R 1209 564, [illegible]

[illegible]

few months prior to his insolvency with the sole object of having been sold a valid trust is created 50 M 815 = *105 Ind Cas 138* A trust relating to immovable property must be in writing, signed and registered or by Will The object of the trust *must not be of a nebulous* character, but of such a nature that a Court can administer it 78 Ind Cas 320 = 1925 Oudh 202, see also 49 M L J 734 Where a person sets apart a certain sum for charity and invests it with a merchant and the interest paid by the merchant is spent on charity, the merchant is not a trustee in respect of the amount A I R 1925 Sind 259 A trust created outside India can be enforced in India 13 Bom L R 1121

Creation of trust

6 *Subject to the* provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (*a*) an intention on his part to create thereby a trust, (*b*) the purpose of the trust, (*c*) the beneficiary, and (*d*) the trust property, and (unless the trust is declared by Will, or the author of the trust is himself to be the trustee) transfer the trust property to the trustee

Illustrations

(*a*) A bequeaths certain property to B "having the fullest confidence that he will dispose of it for benefit of C" This creates a trust so far as regards A and C.

(*b*) A bequeaths certain property to B, 'hoping he will continue it in the family'. This does not create a trust as the beneficiary is not indicated with reasonable certainty

(*c*) A bequeaths certain property to B requesting him to distribute it amongst such members of C's family as B should think most deserving This does not create a trust for the beneficiaries are not indicated with reasonable certainty

(*d*) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children This does not create a trust for the trust property is not indicated with sufficient certainty

(*e*) A bequeaths a shop and stock in trade to B on condition that he pays A's debts and a legacy to C This is a condition not a trust for A's creditors and C

Notes—There is nothing in this section to suggest that trust property cannot be effectively transferred by a registered instrument 29 M 412 *One of the essentials* to the creation of a trust under this section is that the author of the trust should transfer the trust property to the trustee 7 Bom L R 179, see also 47 M L J 119, 24 M L T 267 Where the mortgagor appoints mortgagee as his agent for management of estate with liability to account the mortgagor is not a trustee 24 C W N 769 A gift subject to condition that donee should maintain certain person was held to create an implied trust A I R 1925 Nag 29 As regards uncertainty and vagueness of trust, *vide* A I R 1925 Sind 195, 8 *Ind* Cas 375

Who may create trust

7 A trust may be created—

(*a*) by every person competent to contract, and,

(*b*) with the the permission of a principal Civil Court of original jurisdiction by or on behalf of a minor,

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust property

Subject of trust

8 The subject matter of a trust must be property transferable to the beneficiary

It must not be a merely beneficial interest under a subsisting trust

Notes —All transferable property can be saddled with a trust by deed *inter vivos* or by Will if objects of the trusts are lawful A I R 1925 Sind 159 A trust is perfectly created unless the legal interest be actually vested in the trustee *Garrard* v *Landerdale*, 2 Russ & M 452 , *Meek* v *Kettl will*, 1 Hare, 469 , *Ellison*, 6 Ves 662

Who may be beneficiary

9 Every person capable of holding property may be a beneficiary

Disclaimer by beneficiary

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up with notice of the trust, a claim inconsistent therewith

Notes — 'Those who are capable of taking the legal estate, may, through the channel of the trust be made recipients of the equitable' —*Lewin on Trusts*, p 44 An alien can be a beneficiary *Dumoncell* v *Dumoncell*, 13 Ir Eq Rep 92

Who may be trustee

10 Every person capable of holding property may be a trustee , but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract

No one bound to accept trust

No one is bound to accept a trust

Acceptance of trust

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance

Disclaimer of trust

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it and such disclaimer shall prevent the trust property from vesting in him

A disclaimer by one of two or more co trustees vests the trust property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust

Illustrations

(*a*) A bequeathes certain property to B and C, his executors as trustees for D, B, and C prove A's Will This is in itself an acceptance of the trust, and B and hold the property in trust for D

(*b*) A transfers certain property to B in trust to sell it, and to pay out of the proceeds A's debts B accepts the trust, and sells the property So far as regards [illegible]

[illegible] ts and appoints him his [illegible] d appropriates it to the

[illegible] ng and holding the legal [illegible] to execute the trust and [illegible] *Lewin on Trusts*, p 27 [illegible] ble to undertake a trust [illegible] I 715 ; *Doyle* v *Blake*, 2 [illegible] e of conduct without any [illegible] & K 195 The effect of [illegible] the whole legal estate in [illegible]

CHAPTER III

Of the Duties and Liabilities of Trustees

Trustee to execute trust

11 The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section be given by a principal Civil Court of original jurisdiction

Nothing in the section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal, or manifestly injurious to the beneficiaries

Explanation—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (*a*) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust or, when such instrument is a Will, at the date of his death and (*b*) in the case of debts not bearing interest to make such payment without interest

Illustrations

(*a*) A a trustee is simply authorized to sell certain land by public auction. He cannot sell the land by private contract

(*b*) A, a trustee of certain land for X, Y, and Z is authorised to sell the land to B for a specified sum X Y and Z being competent to contract, consent that A may sell the land to C for a less sum A may sell the land accordingly

(*c*) A a trustee for B and her children is directed by the author of the trust to lend, on B s request, trust property to B s husband C on the security of his bond C becomes insolvent and B requests A to make the loan A may refuse to make it

Trustee to inform himself of state of trust property

12 A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust property to obtain, where necessary, a transfer of the trust property to himself, and (subject to the provisions of the instrument of trust) to get in trust moneys invested on insufficient or hazardous security

Illustrations

(*a*) The trust property is a debt outstanding on personal security The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding The trustee s duty is to recover the debt without unnecessary delay

(*b*) The trust property is money in the hands of one of two co trustees No discretionary power is given by the instrument of trust The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required

Trustee to protect title to trust property

13 A trustee is bound to maintain and defend all such suits and (subject to the provisions of the instrument of trust) to take such other steps as regard being had to the nature and amount or value of the trust property may be reasonably requisite for the preservation of the trust property and the assertion or protection of the title thereto

Illustration

The trust property is immovable property which has been given to the author of the trust by an unregistered instrument Subject to the provisions of the Indian Registration Act, 1877, the trustee's duty is to cause the instrument to be registered

Notes.—The first duty of trustees is to place the trust property in a state of security *Jacob* v *Lucas* I Beav 436 *Coffrey* v *Darby*, 6 Ves 488

Trustee not to set up title adverse to beneficiary

14 The trustee must not for himself or another, set up or aid any title to the trust property adverse to the interest of the beneficiary

Care required from trustee

15 A trustee is bound to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own, and in the absence

of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction, or deterioration of the trust property

Illustrations

(*a*) A living in Calcutta is a trustee for B, living in Bombay A remits trust funds to B by bills drawn by a person of undoubted credit in favour of the trustees as such and payable at Bombay The bills are dishonoured A is not bound to make good the loss

(*b*) A, a trustee of leasehold property directs the tenant to pay the rents on account of the trust to a banker, B, then in credit The rents are accordingly paid to B, and A leaves the money with B only till wanted Before the money is drawn out, B becomes insolvent A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss

(*c*) A, a trustee of two debts for B releases one and compounds the other in good faith and reasonably believing that it is for B s interest to do so A is not bound to make good any loss caused thereby to B

(*d*) A, a trustee, directed to sell the trust property by auction, sells the same but does not advertise the sale, and otherwise fails in reasonable diligence in inviting competition A is bound to make good the loss caused thereby to the beneficiary

(*e*) A, a trustee for B in execution of his trust sells the trust property but from want of due diligence on his part fails to receive part the purchase money A is bound to make good the loss thereby caused to B

(*f*) A, a trustee for B of a policy of insurance, has funds in hands for payment of the premiums A neglects to pay the premiums, and the policy is consequently forfeited A is bound to make good the loss to B

(*g*) A bequeathes certain moneys to B and C as trustees and authorises them ... firm in which A ... the firm B and ... ity of the new firm ... his co trustee C C ... loss resulting to B

Notes —The specific provisions contained in other sections of the Indian Trust ... itable ... way ... le to ... quires ... hat a ... ffairs

16 Where the trust is created for the benefit of several persons in succession, and the trust property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character

Conversion of perishable property

Illustrations

(*a*) A bequeaths to B all his property in trust for C during his life, and on his death, for D and, on D s death for E A's property consists of three lease hold houses; and there is nothing in A s Will to show that he intended the houses to be enjoyed in specie B should sell the houses and invest the proceeds in accordance with section 20

(*b*) A bequeaths to B his three lease hold houses in Calcutta and all the furniture therein in trust for C during his life and, on his death for D, and on D s death for E Here an intention that the houses and furniture should be enjoyed in specie appears clearly and B should not sell them

Notes —Where a testator gives his personal estate or the residue of his personal estate to several persons in succession and the subject of the bequest is of a wasting nature the Court implies the intention that such heritable estate should assume a permanent character and so become capable of succession *Howe* v *Earl of Dartmouth*, 7 Ves 137, *Richfield* v *Baker* 2 Beav 481

Trustee to be impartial

17 Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith, of such discretion

Illustration

A, a trustee for B C and D, is empowered to choose between several specified A in good faith, choses one of these modes the result of the choice may b- to vary the

Trustee to prevent waste

18 Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust property, if he commits, or threatens to commit any act which is destructive or permanently injurious thereto the trustee is bound to take measures to prevent such act

Accounts and information

19 A trustee is bound (*a*) to keep clear and accurate accounts of the trust property, and (*b*) at all reasonable times at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust property

Investment of trust money

20 Where the trust property consist of money, and cannot be applied immediately or at an early date to the purposes of the trust the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others —

(*a*) in promissory notes, debentures stock or other securities *of any local Government * or of the Government of India, or of the United Kingdom

both the principal whereof and the interest and unconditionally guaranteed by any such or the purposes of this clause, to be securities of such Government †

(*b*) in bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India,

"Provided that after the fifteenth day of February 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity, but nothing b fore the date aforesaid" ‡ cent stock India three per cent any other capital stock, which may at any time hereafter be issued by the Secretary of State for India in Council under the authority of an Act of Parliament and charged on the revenues of India, '‡

(*c*) in stock or debentures of or shares in Railway or other Companies the interest whereon shall have b en guaranteed by th Secretary of State f r India in Council, or by t e Government of In' § or in debentures

* The words within quotat en added by A XI of 1920.
† Inserted by Act 18 of 19
‡ The words within quotat added by A
§ Inserted by Act 21 of 191

of the Bombay "Provincial'* Co operative Bank, Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council'†

"(d) ‡ in debentures or other securities for money issued under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust or city improvement trust in any presidency town or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi "

(e) on a first mortgage of immovable property situate in British India provided that the property is not a lease-hold for a term of years, and that the value of the property exceeds by one third, or, if consisting of buildings, exceeds by one half, the mortgage money, or

(f) on any other security expressly authorised by the instrument of trust, or by any rule which the High Court may, from time to time, prescribe in this behalf

Provided that, where there is a person competent to contract, and entitled in possession to receive the income of the trust property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e) and (f), shall be made without his consent writing

Notes—Where trust money cannot be applied either immediately or by a short time to the purposes of the trust it is the duty of the trustee to make the fund productive to the *cestue que trust* by the investment of it on some security *Lewin on Trusts* p 343

"20A§ (1) A trustee may invest in any of the securities mentioned or referred to in section 20 notwithstanding that the same may be redeemable and that the price exceeds the redemption value

Power to purchase redeemable stock at a premium

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (c) and (d) of section 20 which is liable to the redeemed within fifteen years of the date of purchase at par or at some other fixed rate or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section "

21 Nothing in section 20 shall apply to invesments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immovable property already pledged as security for an advance under the Land Improvement Act, 1871, or, in case the trust money does not exceed three thousand rupees a deposit thereof in a Government Savings Bank

Mortgage of land pledged to Government under Act XXVI of 1871

Deposit in Government Savings Banks

22 Where a trustee directed to sell within a specified time extends such time, the burden of proving as between himself and the beneficiary, that the latter is not prejudiced by the extension, lies upon the trustee, unless the extension has been authorised by a principal Civil Court of original jurisdiction

Sale by trustee directed to sell within a specified time

* Substituted by Act 37 of 1923
† The words within quotations have been added by Act 21 of 1917
‡ Clause (d) has been added by Act III of 1908
§ Section 20 A has been added by Act 1 of 1916 s 3

Illustration

A bequeaths property to B directing him with all convenient speed and within five years to sell it and apply the proceeds for the benefit of C In the exercise of reasonable discretion B postpones the sale for six years The sale is not thereby rendered invalid but C alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation In such suit the burden of proving that C has not been injured lies on B

Notes—If the trust be "with all convenient speed and within five years," to sell the estate and apply the funds in payment of debts etc, the proviso as to five years is considered as directory only, and the trustees can sell and make good a title after the lapse of that period The Court could scarcely impute to the settlor the [illegible] t on that the sale at the end of the five years [illegible] would be the case if the power in the trustees were [illegible] 502 citing *Pearce* v *Gardner* 18 Hare 287 [illegible] *La Salla* v *Moorat* 11 L R Eq 8, *Edwards* v [illegible] the trustee neglects to sell within the time mentioned he is answerable for any depreciation *Fry* v *Fry*, 27 Beav 144, *Palleden* v *Hobson* 1 Eq Ref 23

23 Where the trustee commits a breach of trust he is liable to make good the loss which the trust property or the beneficiary has thereby sustained unless the beneficiary has by fraud induced the trustee to commit the breach or the beneficiary, being competent to contract has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach or subsequently acquiesced therein with full knowledge of the facts of the case and of his right as against the trustee

Liability for breach of trust

A trustee committing a breach of trust is not liable to pay interest except in the following cases —

(*a*) where he has actually received interest

(*b*) where the breach consists in unreasonable delay in paying trust money to the beneficiary

(*c*) where the trustee ought to have received interest, but has not done so

(*d*) where he may be fairly presumed to have received interest

He is liable, in case (*a*) to account for the interest actually received and, in cases (*b*) (*c*) and (*d*), to account for simple interest at the rate of six per cent per annum, unless the Court otherwise directs

(*e*) where the breach consists in failure to invest trust money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half yearly rests) at the same rate

(*f*) where the breach consists in the employment of trust property or the proceeds thereof in trade or business, he is liable to account at the option of the beneficiary, either for compound interest (with half yearly rests) at the same rate, or for the net profits made by such employment

Illustrations

(*a*) A trustee improperly leaves trust property outstanding, and it is consequently lost he is liable to make good the property lost but he is not liable to pay interest thereon

(*b*) A bequeaths a house to B in trust to sell it, and pay the proceeds to C B neglects to sell the house for a great length of time whereby the house is deteriorated, and its market price falls. B is answerable to C for the loss

(*c*) A trustee is guilty of unreasonable delay in investing trust money in accordance with section 20 or in paying it to the beneficiary The trustee is liable to pay interest thereon for the period of the delay

(*d*) The duty of the trustee is to invest trust money in any of the securities mentioned in section 20 clause (*a*) (*b*) (*c*) or (*d*) Instead of so doing he retains the money in his hands He is liable at the option of the beneficiary to be charged either with

the amount of principal money and compound interest or with the amount of such securities as he might have purchased with the trust money when the investment

Notes—This section lays down that where a trustee commits a breach of trust, he is *liable to make good the loss which the trust property or the beneficiary has* ... the rule 23 account for to cases of ifications as the circumstances of such case require 1918 M W N 555

24 A trustee, who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set off against his liability again which has accrued to another portion of the trust property through another and distinct breach of trust

No set off allowed to trustee

Notes—*Vide Wiles* v *Gresham*, 2 Drew, 258 at p 271

25 Where a trustee succeeds another, he is not, as such liable for the acts or defaults of his predecessor

Non liability for predecessor s default

Notes—*Vide Re Chapman*, (1826) 2 Ch C A 763

26 Subject to the provisions of sections 13 and 15, one trustee is not, as such liable for a breach of trust committed by his co trustee

Non liability for co-trustee s default

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable,—

(*a*) where he has delivered trust property to his co trustee without seeing to its proper application

(*b*) where he allows his co trustee to receive trust property and fails to make due enquiry as to the co trustee s dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require

(*c*) where he becomes aware of a breach of trust committed or intended by his co trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary s interest

A co trustee, who joins in signing a receipt for trust property, and proves that he has not received the same, is not answerable, by reason of such of signature only, *for loss or misapplication of the property by his* co trustee.

Joining in receipt for conformity

Illustration

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D B and C accordingly sell the property and the purchase money is received by B, and retained in his hands C pays no attention to the matter for two years, and then calls on B to make the investment B is unable to do so, becomes insolvent, and the purchase money is lost C may be compelled to make good the amount

Notes —The general rule is that trustees and executors are not chargeable with each others' default, but the benefit of this rule is denied to a trustee or executor who has been guilty of negligence 7 Bom L R 691 When one of two co trustees has realised assets the other co trustees are also liable for loss 28 Bom L R 1481=99 Ind Cas 763=A I R 1927 Bom 75

Several liability of co trustees

27 Where co-trustees jointly commit a breach of trust or where one of them, by his neglect, enables the other to commit a breach of trust each is liable to the beneficiary for the whole of the loss occasioned by such breach

Contribution as between co trustees

But, as between the trustees themselves, if one be less guilty than another and has had to refund the loss the former may compel the latter, or his legal representative, to the extent of the assets he had received to make good such loss, and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud, to institute a suit to compel contribution

Notes —When there are three trustees and the management was exclusively to one among them, as between the other two they are *in pari delicto* and no suit can be brought by one against the other as being more responsible for the breaches of trust by the third trustee 20 M 398 Each trustee is responsible for the entirety of the loss incurred *Wilson* v *Moore* 1 M & K 146, *Lyse* v *Kingdom*, 1 Coll 188, *Blyth* v *Fladgate* (1891) 1 Ch 337

Non liability of trustee paying without notice of transfer by beneficiary

28 When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered

Liability of trustee where beneficiary's interest is forfeited to Government

29 When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf

Indemnity of trustees

30 Subject to the provisions of the instrument of trust, and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any trust property may be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, not otherwise for involuntary losses

Notes.—*Vide* 22 B 170=6 Bom L R 907

CHAPTER IV

Of the Rights and Powers of Trustees.

31 A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust property

Right to title deed

Notes —The trustees have a right to the custody of the title deeds for the benefit of all parties interested *Garner* v *Harrington*, 22 Beav 630; *Stanford* v *Roberts*, 6 L R Ch App 307

32 Every trustee may reimburse himself, or pay or discharge, out of the trust property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust property, or the protection or support of the beneficiary

Right to reimbursement of expenses

If he pays such expenses out of his own pocket he has a first charge upon the trust property for such expenses and interest thereon, but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust property without previous payment of such expenses and interest

If the trust property fail the trustee is entitled to recover, from the beneficiary, personally on whose behalf he acted, and at whose request, expressed or implied he made the payment, the amount of such expenses

Where a trustee has, by mistake, made an over payment to the beneficiary, he may reimburse the trust property out of the beneficiary's interest If such interest fail the trustee is entitled to recover from the beneficiary personally, the amount of such over payment

Right to be re couped for erroneous over payment

Notes —A trustee is allowed nothing for his trouble, but he is allowed everything for his expenses out of pocket *How* v *Godfrey* Finch 361 It follows said *Lord Eldon* in *Warral* v *Harford*, 8 Ves 8, from the nature of the office, whether expressed in the instrument or not that trust property shall reimburse him all the charges and expenses incurred in the execution of the trust

33 A person, other than a trustee who has gained an advantage from a breach of trust, must indemnify the trustee to the extent of the amount actually received by such person under the breach and where he is a beneficiary, the trustee has a charge on his interest for such amount

Right to indemnity from gainer by breach of trust

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud

Notes —As between the trustees and a third person who has reaped the benefit of the breach of trust though the trustees must make the disbursement in the first instance to the injured party the loss will eventually be cast on the person who was the gainer by the breach of trust *Trafford* v *Boehm* 3 Atk 440

34 A trustee may, without instituting a suit apply by petition to the principal Civil Court of original jurisdiction for its opinion advice, or direction on any present questions respecting the management or administration of the trust property, other than question of detail, difficulty, or importance, not proper, in the opinion of the Court for summary disposal

Right to apply to Court for opinion in management of trust property

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice, or direction given by the Court shall be deemed so far as regards his own responsibility, to have discharged his duties as such trustee in the subject matter of the application

The costs of every application under this section shall be in the discretion of the Court to which it is made

Notes —No appeal lies from an opinion expressed by Court 11 Bom L R 496=33 B 429 Certain existing buildings were badly in need of repairs, and the trustees applied to the Court under this section for its opinion as to whether a certain item of the fund in excess of the defined sum could be spent for the necessary repairs It was held that the question was one of detail with which the Court could ... r and that the case ... section 18 M 443 ... charitable trust 1 S L R 216

35 When the duties of a trustee, as such are completed he is entitled to have the accounts of his administration of the trust property examined and settled, and where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect

Right to settlement of accounts

36 In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions (if any) contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization protection or benefit of the trust property and for the protection or support of a beneficiary to which not competent contrac *

General authority of trustee

Except with permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust property for a term exceeding twenty one years from the date of executing the lease nor without reserving the best yearly rent that can be reasonably obtained

Notes —In a suit on behalf of trust all trustees are to be impleaded 27 C L J 603 A lease for a period exceeding 21 years is only voidable 19 M L J 737=33 M 397

37. Where the trustee is empowered to sell any trust property, he may sell the same subject to prior charges or not, and either together or in lots by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs

Power to sell in lots, and either by public auction or private contract

38 The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title or otherwise, in any conditions of sale, or contract for sale as he thinks fit, and may also buy in the property, or any part thereof, at any sale by auction, and rescind or vary any contract for sale and re sell the property so bought in or as to which the contract is so rescinded without being responsible to the beneficiary for any loss occasioned thereby

Power to sell under special conditions

Power to buy in and re sell

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* In s 37, the second paragraph repealed by Act XII of 1891 Sch I has been omitted

Time allowed for selling trust property

Where a trust is directed to sell trust property, or to invest trust money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase

Illustrations

(*a*) A bequeaths property to B directing him to sell it with all convenient speed, and pay the proceeds to C This does not render an immediate sale imperative

(*b*) A bequeaths property to B directing him to sell it at such time and in such manner as he shall think fit, and invest the proceeds for the benefit of C This does not authorize B as between him and C to postpone the sale to an indefinite period

Power to convey

39 For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary,

Power to vary investments

40 A trustee may at his discretion, call in any trust property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature

Provided that where there is a person competent to contract and entitled at the time to receive the income of the trust property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing

Notes — In cases where there is no express or implied power of sale of immovable property in the trust itself ss 40 and 30 do not enable the property to be sold by the trustees 43 B 519=21 Bom L R 41=49 Ind Cas 832

Power to apply property of minors, etc, for their maintenance, etc

41 Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply, for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship marriage, or funeral the whole or any part of the income to which he may be entitled in respect of such property and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen provided that such trustee may at the time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year

Where the income of the trust property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement, or expenses

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors

Notes —An administrator of an estate is not a trustee 49 Ind Cas 277

Power to give receipts

42 Any trustees or trustee may give a receipt in writing for any money, securities, or other movable property payable, transferable, or deliverable to them or him by reason or in the exercise, of any trust or power and in the absence of fraud such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof

Power to compound etc

43 Two or more trustees acting together may, if and as they think fit—

(a) accept any composition or any security for any debt or for any property claimed,

(b) allow any time for payment of any debt,

(c) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust, and

(d) for any of those purposes enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to them seem expedient without being responsible for any loss occasioned by any act or thing so done by them in good faith

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when, by the instrument of trust (if any) a sole trustee is authorized to execute the trusts and powers thereof

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust (if any), and shall have effect subject to the terms of that instrument and to the provisions therein contained

This section applies only to trusts created after this Act comes into force

Notes —Sole trustee has power to compromise 41 M L J 474

Power to several trustees of whom one disclaims or dies

44 When an authority to deal with the trust property is given to several trustees, and one of them disclaims or dies the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust, it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees

Notes —In the case of a private trust the surviving trustees can continue the trust in the absence of any terms in the instrument of trust itself indicating an [illegible] the whole body was necessary for the [illegible] rust deed 96 Ind Cas 635=A I R [illegible] clearly provides for vacancies being [illegible] ustee operate to discharge him from [illegible]

Suspension of trustee's powers by decree

45 When a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending of the Appellate Court

CHAPTER V

OF THE DISABILITIES OF TRUSTEES

Trustee cannot renounce after acceptance

46 A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust

Notes —A person who has once undertaken the office of trustee either of a direct or a constructive trust cannot escape liability by a mere subsequent renunciation except under the conditions specified in s 46 of the Act 28 Bom L R 1481=99 Ind Cas. 763=A I R 1927 Bom 75

Trustee cannot delegate

47. A trustee cannot delegate his office or any of his duties either to a co trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation

Explanation —The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion, is not a delegation within the meaning of this section

Illustrations

(a) A bequeaths certain property to B and C on certain trusts to be executed by ... dies C may bequeath

... same A may employ

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C B may employ a proper person to collect these rents

Co trustees cannot act singly

48 When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides

Notes —Where a co trustee *bona fide* believed that he was entitled to call himsel a hereditary trustee and as such had the preferential or exclusive right of manage ment of the trust property and so di ... exclusive management could not be ... trustee's part he should not be absolut ... property 103 Ind Cas 710 Where ... in a suit for ejectment relating to trus ... other as co defendant A I R 1924 Nag 335 Where there are more trustees than one, one cannot borrow money for trust without express authority from the others 97 Ind Cas 433=A I R 1926 Mad 1199

Control of discretionary power.

49 Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Trustee may not charge for services

50 In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing his trust

Nothing in this section applies to any official Trustee, Administrator General, Public Curator or person holding a certificate of administration

Trustee may not use trust-property for his own profit

51 A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.

Notes — ... employer should ... assured by the price ... there is any pro ... trust fund for his own purpose 99 Ind Cas 713

Trustee for sale or his agent may not buy

52 No trustee whose duty it is to sell trust property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

53 No trustee, and no person who has recently ceased to be a trustee may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of, the trust property or any part thereof, and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary

Trustee may not buy beneficiary's interest without permission

And no trustee, whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself

Trustee for purchase

Notes—An executor *de son tort* falls within the principle if not the letter of the prohibition extended *in this section* 15 Bom L R 343=19 Ind Cas 844

54 A trustee or co trustee whose duty it is to invest trust money on mortgage or personal security, must not invest it on a mortgage by, or on the personal security of himself or one of his co trustees

Co trustees may not lend to one of themselves

CHAPTER VI

Of the Rights and Liabilities of the Beneficiary

55 The beneficiary has, subject to the provisions of the instrument of trust a right to the rents and profits of the trust property

Rights to rents and profits

56 The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest,

Right to specific execution

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract, and all of one mind, he or they may require the trustee to transfer the trust property to him or them, or to such person as he or they may direct

Right to transfer of possession

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage

Illustrations

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the Rs 10 000

(*c*) A transfers certain property to B and directs him to sell or invest it for the benefit of C who is competent to contract C may elect to take the property in its original character

57 The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust the documents of title relating solely to the trust property the accounts of the trust property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty

Right to inspect and take copies of instrument of trust accounts etc

Notes—*Cestui que trust* have a right at all reasonable times to inspect the documents relating to the trust *Re Cowie*, 31 Ch D 179 But this right does not arise until the relationship of trustee and *cestui que trust* has been established *Wyatt* v *Humberston*, 27 Beav 421

58 The beneficiary, if competent to contract may transfer his interest but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest

Right to transfer beneficial interest

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest nothing in this section shall authorize her to transfer such interest during her marriage

59 Where no trustees are appointed or all the trustees die, disclaim or are discharged or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee

Right to sue for execution of trust

60 The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons

Right to proper trustees

Explanation I—The following are not proper persons within the meaning of this section —

A person domiciled abroad an alien enemy a person having an interest inconsistent with that of the beneficiary a person in insolvent circumstances, and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor

Explanation II—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least

Illustrations

(*a*) A one of several beneficiaries, proves that B the trustee has improperly disposed of part of the trust property, or that the property is in danger from B s being in insolvent circumstances or that he is incapacitated from acting as trustee A may obtain a receiver of the trust property

(*b*) A bequeaths certain jewels to B in trust for C B dies during A's life time, then A dies C is entitled to have the property conveyed to a trustee for him

(*c*) A conveys certain property to four trustees in trust for B Three of the trustees die B may institute a suit to have three new trustees appointed in the place of the deceased trustees

(*d*) A conveys certain property to three trustees in trust for B All the trustees disclaim B may institute a suit to have three trustees appointed in place of the trustees so disclaiming

(*e*) A, a trustee for B refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors or suffers a co-trustee to commit a breach of trust B may institute a suit to have A removed and a new trustee appointed in his room

61 The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust

Right to compel to any act of duty

Illustrations

(*a*) A contracts with B to pay him monthly Rs 100 for the benefit of C B [illegible] he will hold in trust for C the money so to [illegible] in accordance with his contract C may co[illegible] to sue on the contract in B s name

(*b*) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally A is about to make an improvident sale of the land B may sue on behalf of himself and C for an injunction to restrain A from making the sale

62 Where a trustee has wrongfully bought trust property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or if it has been bought for him by any person with notice of the trust, by such person But in such case the beneficiary must repay the purchase money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property, and the trustee or purchaser must (*a*) account for the nett profits of the property, (*b*) be charged with an occupation rent, if he has been in actual possession of the property, and (*c*) allow the beneficiary to deduct a proportionate part of the purchase money if the property has been deteriorated by the acts or omissions of the trustee or purchaser

Wrongful purchase by trustee

Nothing in this section—

(*a*) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re ransferred, have contracted in good fatih with the trustee or purchaser, or

(*b*) entitles the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee

63 Where trust property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust

Following trust property—into the hands of third persons,

Where the trustee has disposed of trust property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust property

into that into which it has been converted

Illustrations

(*a*) A, a trustee for B of Rs 10 000 wrongfully invests the Rs 10 000 in the [illegible] land B [illegible] to the land

[illegible] wn name partly with his [illegible] entitled to a charge on [illegible]

Notes [illegible] to cases where *Tarward* money is unlawfully [illegible] avan's daughter 74 Ind. Cas 1012 [illegible] beneficiary can, if proceeds can be [illegible] them and if the proceeds cannot be [illegible] n with private funds and purchased property beneficiary has a charge thereon for the trust money 84 Ind Cas 470=A I R 1925 Cal 230

Saving of rights of certain transferees

64 Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase money was paid, or when the conveyance was executed, or

(b) a transferee for consideration from such a transferee

A judgment creditor of the trustee attaching and purchasing trust property is not a transferee for consideration within the meaning of this section

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872,* section 108, or the liability of a person to whom a debt or charge is transferred

Notes —A trustee can acquire no title adverse to the trust 19 A 275 P C = I C W N 265 = 24 I A 10 A transferee from a religious endowment is not protected by this section 73 Ind Cas 711

Acquisition by trustee of trust property wrongfully converted

65 Where a trustee wrongfully sells or otherwise transfers trust property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration

Right in case of blended property

66 Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him

Wrongful employment by partner trustee of trust property for partnership purposes

67 If a partner, being a trustee, wrongfully employs trust property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries unless he had notice of the breach of trust

The partners having such notice are jointly and severally liable for the breach of trust

Illustrations

(a) A and B are partners A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor B instead of winding up the affairs of the partnership, retains all the assets in the business Z may compel him, as partner to account for so much of the profits as are derived from A s share of the capital B is also answerable to Z for the improper employment of A s assets

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership business B gives an indemnity to X and Y against the claims of C Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B

Liability of beneficiary joining in breach of trust

68 Where one of several beneficiaries—

(a) joins in committing breach of trust, or

(b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(d) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest

* IX of 1872

impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage

Notes—If a beneficiary be responsible for having joined in a breach of trust all the benefit that would have accrued to him either directly or derivatively, either from the trust fund, or any other estate comprised in the same settlement may be stopped by other beneficiaries *Jacobs* v *Ryland*, 17 L R Eq 341, *Doering* v *Doering*, 42 Ch D 203, *Woodyat* v *Gresley*, 8 Sim 183

Rights and liabilities of beneficiary's transferee

69 Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer

CHAPTER VII

Of Vacating the Office of Trustee

Office how vacated

70 The office of a trustee is vacated by his death or by his discharge from his office

Discharge of trustee

71. The trustee may be discharged from his office only as follows —

(*a*) by the extinction of the trust,

(*b*) by the completion of his duties under the trust,

(*c*) by such means as may be prescribed by the instrument of trust,

(*d*) by appointment under this Act of a new trustee in his place,

(*e*) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(*f*) by the Court to which a petition for his discharge is presented under this Act

Notes—Where a trust becomes defunct, the trustee becomes thereafter a simple trustee for the real owner of the properties 4 Pat L T 731=2 Pat L R 27

Petition to be discharged from trust

72 Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office, and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust property But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place

Appointment of new trustees on death, etc

73 Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(*a*) the person nominated for that purpose by the instrument of trust (if any), or

(*b*) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract,

or the surviving or continuing trustees or trustee for the time being, or legal re[illegible] trustee, or (with the consent [illegible] retire simultaneously, or (with

Every such appointment shall be by writing under the hand of the person making it

On an appointment of a new trustee the number of trustees may be increased

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a Will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power

Notes—Applications for the removal of a trustee should generally be brought by a suit and where it is alleged that the trustees have committed a breach of trust, the Court should ask the delinquent trustee to make good the breach of trust 29 Bom L R 1576 *Instruments appointing new trustee under this section do not require* registration 6 M L T 240=3 Ind Cas 435

Appointment by Court

74 Whenever any such vacancy or disqualification occurs, and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction, for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly

Rules for selecting new trustees

In appointing new trustees, the Court shall have regard (*a*) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust, (*b*) to the wishes of the person (if any) empowered to appoint new trustees, (*c*) to the question whether the appointment will promote or impede the execution of the trust, and, (*d*) where there are more beneficiaries than one, to the interest of all such beneficiaries

Notes—The Court cannot appoint a receiver in a proceeding for the removal of a trustee and the appointment of a new trustee under this section 103 Ind Cas 816, see also A I R 1924 All 376, 3 S L R 118

Vesting of trust property in new trustees

75 Whenever any new trustee is appointed under section 73 or section 74, all the trust property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require

Powers of new trustees

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall *in all respects act, as if he had been originally nominated* a trustee by the author of the trust

Survival of trust

76. On the death or discharge of one of several co-trustees, the trust survives and the trust property passes to the others, unless the instrument of trust expressly declares otherwise

CHAPTER VIII

OF THE EXTINCTION OF TRUSTS

Trust how extinguished

77 A trust is extinguished—

(a) When its purpose is completely fulfilled, or

(b) when its purpose becomes unlawful, or

(c) when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise, or

(d) when the trust, being revocable, is expressly revoked

Notes—Where the trust is extinguished under clause (c) the donor of the property is entitled to recover the land given 67 Ind Cas 432, 1923 Lah 93 A trust cannot be cancelled at the instance of one trustee applying for cancellation on the ground of his dissatisfaction with the management of other co trustee 23 A L J 28=47 A 313

Revocation of trust

78 A trust created by Will may be revoked at the pleasure of the testator,

A trust othorwise created can be revoked only—

(a) where all the beneficiaries are competent to contract—by their consent,

(b) where the trust has been declared by a non testamntary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust, or

(c) Where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust

Illustration

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A s creditors A reserves no power of revocation *If no communi*cation has been made to the creditors A may revoke the trust; but if the creditors are parties to the arrangement the trust cannot be revoked without their consent

Notes—A debtor by an arrangement in writing, made with one of his creditors a trustee in respect of some of his property, for the payment of his debts No communication of the arrangement was made to the creditors The debtor subsequently hypothecated a portion of the trust property to secure an advance made by the creditor who had been made trustees under the arrangement The creditor afterwards appropriated the property *Held*, that the hypothecation bond, subsequent to the trust arrangement, under the circumstances amounted to revocation 1 Ind Cas 347

Revocation not to defeat what trustees have duly done

79 No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust

CHAPTER IX

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

Where obligation in nature of trust is created

80 An obligation in the nature of a trust is created in the *following cases*

Where it does not appear that transferor intended to dispose of beneficial interest

81 Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative

Illustrations

(*a*) A conveys land to B without consideration and declares no trust of any part. It cannot consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land, B holds the land for the benefit of A

(*b*) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z B holds Z for the benefit of A

(*c*) A transfers certain stock belonging to him into the joint names of himself and B It cannot consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life A and B hold the stock for the benefit of A during his life

(*d*) A makes a gift of certain land to his wife B She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B s benefit

Notes —' Where a feoffment is made without consideration the use results to a feoffor " *Dyer* v *Dyer*, 2 Cox 93

Transfer to one for consideration paid by another

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration

Nothing in this section shall be deemed to affect the Code of Civil Procedure,* Section 317, or Act No XI of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), section 36

Notes —Where a husband buys property in the name of his wife he should be presumed to have done so for the benefit of the wife 47 Ind Cas 377

Cases —2 Lah L J 446 , see also 45 A 482 This section appears to throw the burden of proving that a transaction is benami on the party alleging it 82 Ind Cas 832=1 O W N 710

Trust incapable of execution or executed without exhausting trust property

83 Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust property, the trustee, in the absence of a direction to the contrary, must hold the trust property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative

Illustrations

(*a*) A conveys certain land to B—
"upon trust and no trust is declared , or
"upon trust to be thereafter declared,' and no such declaration is ever made , or
upon trusts that are too vague to be executed , or
upon trusts that become incapable of taking effect , or
"in trust for C,' and C renounces his interest under the trust
In each of these cases B holds the lands for the benefit of A

[illegible]

moiety and the part unapplied of the second moiety for the benefit of A or his legal representative

* Act XIV of 1882 But now see Act V of 1908

o be conveyed for the bene land if pur chased

Notes—The general rule and principle of the Indian law as to resulting trust differs but little, if at all from the general rule of English law upon the same subject 39 M L J, 396=47 I A 275 (P C)=32 C L J 490=57 Ind Cas 834 Where there is a resulting trust in favour of the seller, the heirs of the seller are entitled to the property 17 Bom L R 938

Transfer for illegal purpose

84 Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Notes—Where an agreement is void to the knowledge of both parties but is not carried out into execution money paid under the agreement can be recovered under the principle of the section 89 Ind Cas 684 As regards the meaning of the expression 'carried into execution" *vide* 15 M. L J 478=29 M 72

Bequest for illegal purpose

85 Where a testator bequeaths certain property upon trust and the purpose of the trust appears on face of the Will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose the legatee must hold the property for the benefit of the testator's legal representative

Bequest of which revocation is prevented by coercion

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative

Transfer pursuant to rescindable contract

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor subject to repayment by the latter of the consideration actually paid

Debtor becoming creditor's representative

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein

Advantage gained by fiduciary

88. Where a trustee, executor, partner, agent, director of a company, legal advisor or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself, any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations

B, a legatee, his claim under the must hold for the benefit B of the

purpose of his own business A arising from such user

(c) A, ssor paying him a sum tary

(d) A, nging to the partnership

(e) A, in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees A holds the lakh for the benefit of the partnership

(f) A and B are partners A dies B, instead of winding up the affairs of the partnership retains all the assets in the business B must account to A's legal representative for the profits arising from A's share of the capital

(g) A, an agent, employed to obtain a lease for B, obtains the lease for himself A holds the lease for the benefit of B

e at can

sing sale cannot purchase the property where the purchase would conflict with his duty respecting it or his position in regard to it 9 A L J 311, 24 C W N 478=30 C L J 177=54 Ind Cas 6, see also 20 Bom L R 911=47 Ind Cas 883, 51 C 299, 46 M L J 532, 49 M L J 675, 29 C W N, 491 A resulting trust takes place where several persons jointly furnish the purchase money and the purchase is made in the name of one of them 56 Ind Cas 386 When two persons related to the minor as uncles assumed management of the minor's property and made collection of outstandings they are liable to account under this section 28 Bom L R 1481, see also 51 B 133 A trustee who relies on abandonment of the trust by the beneficiary and acquires property by his own exertions need not hold it as a trustee but may hold it for his own benefit 5 Pat L T Sup 1=1925 Pat 68 Illustration (f) goes further than the operative portion of the section itself and does not enunciate good law 2 M W N 341 *Vide* also 9 A L J 311, 9 Bom L R 606

Advantage gained by exercise of undue influence

89 Where, by the exercise of undue influence any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced

Notes—Where a compromise is entered into between persons one of whom could not have in good faith believed in the claim put forward by him and the latter secures an undue advantage to the prejudice of the other party such advantage must be deemed to be held in trust for the benefit of the person prejudiced or his representative and should be restored to the latter 52 Ind Cas 1003, see also 45 C 17

Advantage gained by qualified owner

90 Where a tenant for life, co owner, mortgagee or other qualified owner of any property, by availing himself of his position as such gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining, such advantage

Illustrations

(a) A a tenant for life of leasehold property renews the lease in his own name and for his own benefit A holds the renewed lease for the benefit of all those interested in the old lease

(b) ... mastana to ... of the vill ... overn me ... e and

his becoming himself the purchaser of it The land is accordingly sold to B Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A

Notes—No party to a fraudulent transaction can be allowed to derive any benefit for it 30 C L J 475, see also 52 M L J 135 To support a claim under this section there must be something unfair—something amounting at least to sharp practice in the conduct of the purchase 29 C L J 492=49 Ind Cas 307, see also 21 C W N 473 The parties in possession under a lease are jointly entitled to participate in the benefit of a renewal Before either can take and hold a lease to himself alone his co-tenants must have declined their portions of its benefit or have refused to submit to their share of its obligation 63 Ind Cas 3=13 L W 441 The word "properly incurred, in this section means reasonably and suitably incurred 94 Ind Cas 941=22 N L R 86 This section does not

condition being that
s due share of the
nd Cas 431
y by a Hindu widow
Where plaintiff and
oint patta, they are
wal of lease in favour
1 200, see also 26
Ind Cas 55

91 Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract

Property acquired with notice of existing contract

Notes—Where after contracting to sell certain immovable properties to defendants 4 and 5 defendants 1 to 3 sold the same to the plaintiff who had notice of the prior contract to sell, the plaintiff is not entitled to use 3 L W 457=30 M L J 559

92 Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract

Purchase by person contracting to buy property to be held on trust

93 Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co creditors he must hold, for the benefit of such creditors, the advantage so gained

Advantage secretly gained by one of several compounding creditors

94 In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be) to the extent necessary to satisfy their just demands

Constructive trusts in cases not expressly provided for

Illustrations

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts The legatees hold for the benefit of B's creditors to the extent necessary to satisfy their just demands, the assets so distributed.

(b) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money B may compell him to account for such moneys

(c) A makes a gift of a lakh of rupees to B reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs 10 000 The gift is void as to Rs 10 000, and B holds that sum for the benefit of A

Notes —Where on the death of the father the uncles of the minor assumed management of the minor s property and made collection of outstandings they were liable to account as trustees a constructive trust having been created 28 Bom L R 1481=99 Ind Cas 763 A constructive trust is raised by a Court of Equity whenever a person clothed with a fiduciary character gains some personal advantage by availing himself of his situation as trustee —*Lewin on Trusts* p 201

95 The person holding property in accordance with any of the preceding sections of this Chapter must so far as may be perform the same duties and is subject so far as may be to the same liabilities and disabilities as if he were a trustee of the property for the person for whose benefit he holds it

Obligors duties liabilities and disabilities

Provided that (*a*) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment, and (*b*) where he holds the property by virtue of a contract with a person for whose benefit he holds it or with any one through whom such person claims he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof

Notes —*Vide* 45 M 415, (1921) M W N 873, 42 M L J 74 9 Bom L R 600

96 Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force

Saving of rights of *bona fide* purchasers

Notes —In cases of gratuitous bailment bailee is not trustee 14 L W 599

THE SCHEDULE

STATUTE

Year and Chapter	Short title	Extent of repeal
29 Car II, c 3	The Statute of Frauds	Sections 7 8 9 10 and 11

ACTS OF THE GOVERNOR GENERAL IN COUNCIL

Number of year	Short title	Extent of repeal
XXVIII of 1866	The Trustees and Mortgagees Powers Act, 1866	Sections 2 3 4 5 32 33 34, 35 36 and 37 In section 39* and 43 the word "trustee wherever it occurs, and in section 43 the words "management or and the trust property or"
I of 1877	The Specific Relief Act 1877	In section 12 the first illustration

* In the schedule the figures 39 have been repealed by Act XII of 1891 Sch I, but the two words between which the figures 39 stand are allowed to stand as they are

his becoming himself the purchaser of it The land is accordingly sold to B Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A

Notes—No party to a fraudulent transaction can be allowed to derive any benefit for it 30 C L J 475 ; see also 52 M L J 135 To support a claim under this section there must be something unfair—something amounting at least to sharp practice in the conduct of the purchase 29 C L J 492=49 Ind Cas 302, see also 21 C W N 473 The parties in possession under a lease are jointly entitled to participate in the benefit of a renewal Before either can take and hold a lease to himself alone his co-tenants must have declined their portions of its benefit or have refused to submit to their share of its obligation 63 Ind Cas 3=13 L W 441 The word "properly incurred , in this section means reasonably and suitably incurred 91 Ind Cas 941=22 N L R 86 This section does not impose an absolute right but a right subject to a condition, the condition being that the party seeking to benefit by its provisions must repay his due share of the expenses properly incurred in acquisition of the advantage 5 Ind Cas 431 [illegible] ...e also 25 Ind Cas 55

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract

Property acquired with notice of existing contract

Notes—Where after contracting to sell certain immovable properties to defendants 4 and 5 defendants 1 to 3 sold the same to the plaintiff who had notice of the prior contract to sell, the plaintiff is not entitled to use 3 L W 457=30 M L J 559

92 Where a person contracts to buy property to be held on trust for certain beneficiaries, and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract

Purchase by person contracting to buy property to be held on trust

93 Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co creditors he must hold, for the benefit of such creditors, the advantage so gained

Advantage secretly gained by one of several compounding creditors

94 In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands

Constructive trusts in cases not expressly provided for

Illustrations

(*a*) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B s debts The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands the assets so distributed.

(*b*) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money B may compell him to account for such moneys

(c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs 10,000 The gift is void as to Rs 10,000, and B holds that sum for the benefit of A

Notes —Where or
management of the tr
liable to account as
R 1481=99 Ind Cas
whenever a person, clothed with a fiduciary character gains some personal advantage by availing himself of his situation as trustee —*Lewin on Trusts* p 201

95 The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it

Obligor's duties, liabilities and disabilities

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment, and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof

Notes —*Vide* 45 M 415, (1921) M W N 873, 42 M L J 74, 9 Bom L R 600

96 Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force

Saving of rights of *bona fide* purchasers

Notes —In cases of gratuitous bailment, bailee is not trustee 14 L W 599

THE SCHEDULE

STATUTE

Year and Chapter	Short title	Extent of repeal
29 Car II, c 3	The Statute of Frauds	Sections 7, 8, 9, 10 and 11

ACTS OF THE GOVERNOR GENERAL IN COUNCIL

Number of year	Short title	Extent of repeal
XXVIII of 1866	The Trustees' and Mortgagees Powers Act, 1866	Sections 2, 3, 4 5, 32, 33, 34, 35, 36 and 37 In section 39* and 43 the word "trustee" wherever it occurs, and in section 43 the words "management or" and "the trust property or"
I of 1877	The Specific Relief Act 1877	In section 12 the first illustration

* In the schedule the figures 39 have been repealed by Act XII of 1891 Sch I; but the two words between which the figures 39 stand are allowed to stand as they are

THE UNCLAIMED DEPOSITS ACT, 1866.*

ACT NO XXV OF 1866

RECEIVED THE G.-G'S ASSENT ON THE 11TH JULY, 1866

An Act to transfer to the Government of India certain securities and moneys deposited in the High Courts of Judicature at Fort William, Madras and Bombay

Preamble

WHEREAS it is expedient that certain securities and sums of money deposited in the High Courts of Judicature at Fort William, Madras and Bombay in the course of suits in the said Courts,† and appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, should be transferred and paid to the Government of India for the general purposes of Government It is hereby enacted as follows

Notes —Application by a judgment creditor for payment of money already realised in execution for him cannot be barred except under this Act —10 C W N 354 (F B)

Moneys deposited in High Courts and unclaimed for twenty years to be transferred to Government

1 All securities and sums of money deposited in the said High Courts or any of them, in the course of suits in any of the said Courts † and appearing to have been in such deposit for a period of twenty years or upwards, without any claim thereto having been made and allowed during that period, shall be transferred and paid to the Government of India for the general purposes of Government

2 [*Proceeds of estates administered under order of Supreme Court of Straits Settlements or in charge of Administrator General of Bengal*] —*Repealed by Act XVI of 1874.*

Transfer not made pending suits

3 Nothing in this Act shall authorize any transfer or payment of any such securities, sums of money or proceeds as aforesaid, pending any suit already instituted or which shall hereafter be instituted in respect thereof

Re payment on subsequent establishment of claim

4 If any claim shall hereafter be made to any part of the securities, moneys or proceeds which shall be transferred and paid to the Government of India under the provisions of this Act, and if such claim shall, in the case of securities and money transferred and paid under section 1 of this Act be established to the satisfaction of the High Court from which the transfer shall have been made, the Government of India shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as shall appear to be due to the claimant ‡

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* The portions of this Act which referred to the Administrator General of Bengal, (which were repealed by Acts XXIV of 1867, and XII of 1876) and those which referred to the Supreme Court of the Straits Settlements, (which were repealed by Acts XVI of 1874 and XII of 1876), have been omitted

† Here certain words repealed by Acts XII of 1891 Sch I have been omitted

‡ As to the costs of the petitions under this section see the Unclaimed Deposits Act V of 1870

THE UNCLAIMED DEPOSITS ACT, 1870 *

ACT NO. V OF 1870

RECEIVED THE G.-G.'S ASSENT ON THE 4TH FEBRUARY, 1870

An Act to enable the High Courts at the Presidency towns to deal with the costs of petitions for certain moneys transferred to Government

WHEREAS the High Courts of Judicature at Fort William Madras and Bombay, have no power to deal with the costs of petitions under section 4 of Act No XXV of 1866 (*to transfer to the Government of India certain securities and moneys deposited in the High Courts of Judicature at Fort William, Madras and Bombay*) † for payment of certain securities, moneys or proceeds transferred to Government

Preamble

And whereas it is expedient to confer such power upon the said High Courts, It is hereby enacted as follows —

Power to direct by whom costs are to be paid

1 Whenever any of the said Courts shall make an order on any such petition, the Court may direct by whom the whole or any part of the costs of each party are to be paid

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THE USURIOUS LOANS ACT, 1918.‡

ACT NO. X. OF 1918

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL ON THE 2ND MARCH, 1918

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind, It is hereby enacted as follows

Notes—The suit for redemption of jewels pledged is not one to which the Usurious Loans Act can apply For section 2, clause 3 the applicability of the Act is confined to a suit for the enforcement of the security kept 27 Bom L R 1162 There is nothing in this Act to prevent its application in favour of a defendant who confesses judgment 1 Rang 580

Short title and extent

1. (1) This Act may be called the Usurious Loans Act, 1918

(2) It extends to the whole of British India, including British Baluchistan

(3) The Local Government may by notification in the local official Gazette, direct that it shall not apply to any area class of persons or class of transactions, which it may specify in its notification

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* This title was given by the Indian Short Titles Act (XIV of 1897). For the Statement of Objects and Reasons, see the *Gazette of India*, 1870 Pt. V, p 5

† The portions relating to the Administrator General which were repealed by Act II 1874 have been omitted

‡ This Act was declared to be in force in the Pargana of Manpur by Reg 2 of 1926, s 2 in Panth Piploda by Reg 1 of 1929 s 2

Definitions

2 In this Act, unless there in anything repugnant in the subject or context,—

(1) "Interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise

(2) "Loan" means a loan whether of money or in kind and includes any *transaction which is, in the opinion of the Court, in substance a loan*

(3) "Suit to which this Act applies" means any suit—

(*a*) for the recovery of a loan made after the commencement of this Act, or

(*b*) for the enforcement of any security taken or any agreement whether by way of settlement of account or otherwise, made after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act

"or (*c*) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act "*

Notes —The Act does not apply to suits in respect of a loan made or security *taken or an agreement made before its commencement* 96 *Ind Cas* 382 = A I R 1926 Nag 473 Section 2 (3) (*b*) applies irrespective of the fact whether the person sought to be made liable executed the document as principal debtor or as surety only An undertaking to pay 75 per cent interest as surety was relieved against it 23 A L J 438 = 47 All 745 = 88 Ind Cas 78 = A I R 1925 All 409 The Act does not apply to mortgage deed executed before the commencement of the Act 104 Ind Cas 191 = A I R 1927 Nag 388

Re opening of transactions

3 (*1*) Notwithstanding anything in the Usury Laws Repeal Act, 1855,† where, in any suit to which this Act applies, whether heard *ex parte* or otherwise, the Court has reason to believe,—

(*a*) that the interest is excessive, and

(*b*) that the transaction was, as between the parties thereto substantially unfair,

the Court may exercise all or any of the following powers, namely, may,—

(*i*) re open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest

(*ii*) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof,

(*iii*) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just

Provided that in the exercise of these powers the Court shall not—

(*i*) re open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than "twelve"‡ years from the date of the transaction,

(*ii*) do anything which affects any decree of a Court

Explanation —In the case of a suit brought on a series of transactions the expression "the transaction" means for the purposes of proviso (*i*), the first of such transactions"

* Added by Act 28 of 1926 † Act XXVIII of 1855
‡ Substituted by Act 28 of 1926

(2) (a) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known to the creditor

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to be creditor.

Explanation—Interest may of itself be sufficient evidence that a transaction was substantially unfair

(3) This section shall apply to any suit whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan ' or for the redemption of any such security "*

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide*, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section

For the purposes of this sub section, the word "notice' shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act, 1882†

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court

Notes —Where an ignorant and illiterate mortgagor agrees to pay interest at 2 per cent per mensem compoundable with monthly rests the stipulation is hard and unconscionable and a Court of Equity can grant relief 25 Ind Cas 784=1925 All 31 The amount of principal due on a mortgage deed cannot be reduced under the Usurious Loans Act where the consideration is based on an agreement purporting to close previous dealings ranging for a long period and create a new obligation But the Court may reduce the rate of interest under the Act in a proper case 3 O W N (supp) 222 No relief as to rate of interest can be granted merely because of hardship in absence of proof of undue advantage being taken by the creditor of the debtor's position. 18 S L R 39=A. I R 1925 Sind 136

The object of the Usurious Loans Act is to grant relief by refusing to enforce a contract of loan in its entirety when it appears to be unconscionable and to direct the payment of such sum of money as may be fairly due with a reasonable rate of interest 99 Ind Cas 822=8 Lah 205 A Court can act under this section only if the interest be excessive and the transaction between the parties is substantially unfair 103 Ind Cas 531=A I R 1927 Lah 691, see also 21 Bom L R 1126 When a contract requires the debtor to pay interest at the end of the year and in

* Substituted by Act XXVIII of 1926. † Act IV of 1882

the event of default to pay compound interest at the same rate and it cannot be said to be unreasonable or unconscionable this section does not apply 99 Ind Cas 82 Where a suit is not based on any series of transactions but only on one transaction the explanation to the proviso to this section does not apply 103 Ind Cas 531=A I R 1927 Lah 671

4 On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies

Insolvency proceedings

THE USURY LAWS REPEAL ACT, 1855

ACT NO XXVIII OF 1855 *

RECEIVED THE G G's ASSENT ON THE 19TH SEPTEMBER, 1855

An Act for the repeal of the Usury Laws

Preamble

WHEREAS it is expedient to repeal the laws now in force relating to usury, It is enacted follows —

1 [*Repeal of enactments*]—*Repealed by Act XIV of 1870*

Notes —I C 92, 36 P R 1894, 5 W R 51 99 P R 1894

2 In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties and if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable

Rate of interest to be decreed by Courts

Notes —This Act repeals the Mahomedan Laws relating to usury—5 B L R 500 *see* also 19 W R O C 9, 20 W R 317 This Act does not affect the rule of damdupat—14 C 781 but *see* 9 C 825, A W N 1882, 60, 25 M 343 Where [illegible] e allowed up to the date of the decree [illegible] 9 C 871, 110 P R 1908, 6 N [illegible] [illegible] 7 A L J 787, 5 A 419, 21 [illegible]

3 Whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest, upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit

Rate of interest upon a judgment or decree

4 A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties

Contracts for usufruct of property in lieu of interest

* Act XXVIII of 1855 has been declared to be in force in the whole of British India except the Scheduled Districts by the Laws Local Extent Act (XV of 1874), s 3 This title has been given by the Indian Short Titles Act (XIV of 1897)

5 Whenever, under the Regulations of the Bengal Code, * a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of twelve per centum per annum Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated

Amount of interest to be deposited in certain cases of conditional sale under Bengal Regulations

Proviso

6 In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein , or, if no rate of interest shall have been stipulated *and interest be payable under the terms of the contract*, at such rate as the Court shall deem reasonable

Rate of interest on future adjustments of accounts

THE WASTE LANDS (CLAIMS) ACT, 1863

ACT NO. XXIII OF 1863

RECEIVED THE G G S ASSENT ON THE 10TH MARCH, 1863

An Act to provide for the adjudication of claims to waste lands

WHEREAS it is expedient to make special provisions for the speedy adjudication of the claims which may be preferred to waste lands proposed to be sold or otherwise dealt with, on account of Government and of objections taken to the sale or other disposition of such lands , it is hereby enacted as follows —

Preamble

Notes —This Act is drastic in its character and makes a great invasion on private rights, and consequently those pleading it must bring the matter directly within its provinces 21 C W N 291

1 When any claim shall be preferred to any waste land proposed to be sold or otherwise dealt with, on account of Government, or when any objection shall be taken to the sale or other disposition of such land, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of land revenue in such district, by whatever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land, which period shall not be less than three months, proceed to make enquiry into the claim or objections

Enquiry into claims to land or objections to its sale

Notes —There is nothing in Act XXIII of 1863 to prevent a person who has a good title and at any time succeeds in peaceably getting possession, and is not ousted in a possessory suit or who for any other reason is in the advantageous position of a defendant from defending his rights notwithstanding any sale which the [illegible]

* *See* Ben Reg I of 1798 s 2

2. The Collector or other officer as aforesaid, shall call upon the claimant or objector to produce any evidence or documents, upon which he may rely in proof of his claim or objection, and after considering the same, and making any further enquiry that may appear proper, shall dispose of the case by an order for the admission or rejection of the claim or objection, and, if the land is proposed to be sold, for the sale of the same subject to any condition or reservation which to such Collector or other officer as aforesaid, shall appear to be proper

Procedure in such cases

If the land is ordered to be sold subject to any condition or reservation such condition or reservation shall be notified to intending purchasers at the time of sale

Notification of conditions

3 Pending an enquiry into any claim or objection under the last preceding section, Collector or other officer as aforesaid shall postpone the sale or other disposition of the land,

Postponement of sale pending enquiry,

and, if he shall order that such claim or objection be rejected, he shall further postpone the sale or other disposition of the land, to allow the claimant or objector to contest the order of rejection in the manner hereinafter provided

and to allow claimant to contest rejection of claim

4 If the Collector or other officer as aforesaid shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land,

Sale to be stopped if claim appear to be established but may afterwards be proceeded with

but such sale or other disposition of the land may afterwards be proceeded with, if, on an order issued* to try the claim or objection, as provided in section 6 of this Act the claimant or objector shall fail to establish the same

5 If the Collector or other officer as aforesaid shall order that the claim or objection be rejected or that the land be sold subject to any condition or reservation or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector,

Delivery to claimant of copy of order of rejection or of sale

and, if such claimant or objector shall not, within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid, that he intends to contest such order, the order shall be final

Order when final

If the claimant or objector shall within the time allowed, give such notice the Collector or other officer as aforesaid shall immediately make a report to the* superior revenue authority "to which he is immediately subordinate",† and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support, or otherwise, of the claim or objection,

Report to Board

and such* authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify, or reverse the order of the Collector or other officer as aforesaid

Decision of Board

* Certain words repealed by Act 4 of 1914 have been omitted
† Added by Act IV of 1914

Certification to Court

If the * authority as aforesaid, confirmed the order of the Collector or other officer as aforesaid, or modify such order in such manner as to leave any part of such order in force adverse to the claimant or objector, the Collector or other officer as aforesaid shall certify such order to the Court constituted as hereinafter provided,

Notice to claimant

and such Court shall forthwith give notice to the claimant or objector,

Decision when final

and, if such claimant or objector shall not † institute a suit in such Court to establish his claim or objection the order of the authority aforesaid shall be final

Power to order suit to try claim admitted by Collector

6 The Local Government may, within twelve months after the date on which the claim of any claimant of waste land, or the objection of any objector, as aforesaid shall have been admitted under this Act by the Collector or other officer as aforesaid, direct a suit to be brought to try the claim or objection of the claimant or objector, in a Court constituted as hereinafter provided

Special Court for trying claims

7 For the investigation and trial of claims under this Act the local Government shall constitute, in every district in which there may be any waste lands capable of being sold, or otherwise dealt with on account of Government, a Court consisting of an uneven number of persons not less than three, of whom the judge of the district or the officer presiding in the principal Civil Court of original jurisdiction in the district, by whatever name his office may be designated, shall be one

Power of members

Any one or more of the members of which such Court shall consist shall have power to make all such orders in the case as may be necessary prior to the hearing of the suit

Exclusion of officer making original enquiry

Provided that, whenever the Collector or other officer by whom the original enquiry was held, is the officer presiding in the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court

Notice of constitution of special Court

8 Whenever any Court is constituted under this Act notice thereof shall be given by a written proclamation copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district,

Claims not cognizable in other Courts

and from the date of the issue of such proclamation no other Court shall be competent to entertain any claim or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted

Special Courts where held

9 The Courts constituted under this Act shall be held at such place, or places, within the limits of their respective jurisdictions, as shall be considered most convenient

Plaintiff and defendant in suit under section 5

10 In every suit instituted under section 5 of this Act, the claimant of the waste land or objector to the sale or other disposition of such land shall appear as plaintiff and the Collector, or other officer as aforesaid shall appear as defendant on the part of Government

* Certain words repealed by Act 4 of 1914 have been omitted

† Certain words referring to limitation of suits which were repealed by Act IX of 1871, have been omitted For limitation, see now Act IX of 1908

Appearance

Either party may appear by pleader or by agent

Proviso

Provided that if such other officer as aforesaid be the presiding officer to the principal Civil Court of original jurisdiction in the district, the Local Government shall appoint some other officer to appear as defendant in the case on its behalf

Plaintiff and defendant in suits under section 6

In any suit ordered to be instituted* under section 6 of this Act the Government by any officer, to be appointed for the purpose, shall appear as plaintiff, and the claimant or objector as aforesaid shall appear as defendant

Regulation of proceedings

11 In suits instituted under this Act, except as hereinafter provided the proceedings shall be regulated, so as they can be, by the Code of Civil Procedure †

Procedure before hearing

12 The Court shall fix a day for the appearance of the parties, and for the hearing of the suit of which due notice shall be given to the parties or their agents, and on the day so fixed, the parties or their agents shall bring their witnesses into Court together with any documents on which they may intend to rely in support of their respective statements

Procuring attendance of witnesses

If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of suit, and the Court shall issue a subpoena requiring such witness to attend the Court on that day

Power to require attendance of claimant

It shall be competent to the Court to require the personal attendance of the claimant of the waste land, objector, as aforesaid on the day fixed for the hearing or at any subsequent stage of the suit

Procedure on hearing,

13 On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the claimant of the waste land, or the objector, or his agent (when his personal attendance is not required) and the witnesses of the parties,

and upon such examination and after inspecting the documents of the parties and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper

No appeal or revision

14 No appeal shall lie from any decision or order passed under this Act nor shall any such decision or order be open to revision

Reference of question of law, etc to High Court etc

15 If, on the trial of any suit under this Act, any question of law or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubts the Court may, either of its own motion, or on the application of any of the parties to the suit draw up a statement of the case and submit it with its own opinion for the opinion of the High Court of Judicature, or of the highest Civil Court of appeal and revision in the territory in which the land is situate

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* Here certain words have been omitted by Act 4 of 1914

† See Act 5 of 1908

When reference obligatory

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of appeal, if, in any suit under this Act, any question shall arise involving any principal of general importance, or the rights of a class

Court may proceed notwithstanding reference

16 The Court may proceed in the case notwithstanding a reference to the High Court, or other highest Civil Court of appeal as aforesaid, and may pass an order contingent upon the opinion of the High Court, or other Court as aforesaid, on the point referred

but not make final order

but no final order for the sale or other disposition of the land in question in the suit or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed, until the receipt of the order of the said High Court, or highest Civil Court of appeal

Records of cases where to be deposited

17 The record of cases disposed of by Courts constituted under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate

Limitation as to claims to land sold or dealt with

18 No claim to any land, or to compensation or damages in respect of any land, sold or otherwise dealt with on account of Government as waste land, shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with

Provision for such claims if preferred within time

If within three years after any lands have been delivered by the Government to the purchaser, or otherwise dealt with, any claimant or objector shall prefer a claim to the land so delivered or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate, and shall show
claim or objection to th
period limited under sec
objection making the cl
district or other officer as aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district) the defendant in the suit,

and the foregoing provisions of this Act shall be applicable to the trial and determination of this suit.

The report of the officer employed to give delivery, or to take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made, or possession was taken

If claim established possession not to be given but compensation

19 In any case in which the land has been sold, if the Court shall be of opinion that the claim of the claimant is established, the Court shall not award the claimant possession of the land in dispute, but shall order him to receive from the Government treasury

by way of compensation, a sum equal to the price at which the land was sold, in addition to the costs of suit

When land sold not absolutely or not sold, but otherwise dealt with

20 If the land shall have been sold subject to any condition or reservation or shall not have been sold but shall have been otherwise dealt with on account of the Government, and the Court shall be of opinion that the claim to such land, or the objection of the objector, is established the Court shall award the claimant or objector to receive such sum in respect of his interest in such land, as shall be awarded in that behalf under the provisions of Act VI of 1857,*

and thereupon the Local Government shall proceed under the said Act to obtain an award of the value of such interest

Award under two last sections to be in full satisfaction

21 An award under any of the provisions of the two last preceding sections shall be in full satisfaction of the claim of the claimant or objector, and shall bar any future claim on his part in respect to the land in suit resting on the same case of action or on a cause of action which existed prior to the date of the sale or other disposition of the land on account of Government

Government not barred from awarding compensation for land absolutely sold though claim be not preferred in time

22 Nothing in this Act shall be held to prevent the Local Government from awarding to any claimant of waste land sold on account of Government, on proof to the satisfaction of the Local Government of the claim of such claimant (notwithstanding that he may not have preferred his claim either to the Collector or other officer as aforesaid or to the proper Court constituted under this [illegible] as com
pensation [illegible] on
19 of this [illegible] r
vation as to such Local Government may seem proper

Compensation for land sold subject to condition, if claim proved, though not preferred in time

23 If the land have been sold subject to any condition or reservation or have been otherwise disposed of on account of Government and any claim to such land or objection to the sale or other disposition of the land, shall be proved to the satisfaction of the Local Government, although not preferred to the Collector or other officer as aforesaid or to the Court constituted under this Act, within the period prescribed by this act, the Local Government may award to such claimant or objector such amount as to such Local Government may appear to be the value of the interest of such claimant or objector in such land

Exercise of power of the local Government by the Board of Revenue or the Financial Commissioner

23A † In a province for which there is a Board of Revenue or Financial Commissioner the powers and duties of the Local Government under sections 6 10, 22 and 23 may be exercised by such Board or Financial Commissioner as the case may be

24 (*Interpretation Clause, Number, Gender*)—Repealed by Act X of 1914

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* See now the Land Acquisition Act (I of 1894)

† Added by IV of 1914

THE INDIAN WEIGHTS AND MEASURES OF CAPACITY ACT, 1871 *

ACT NO XXXI OF 1871.

RECEIVED THE G G's ASSENT ON THE 30TH OCTOBER, 1871.

An Act to regulate the Weights and Measures of Capacity in British India

Preamble

WHEREAS it is expedient to provide for the ultimate adoption of a uniform system of Weights and Measures of Capacity throughout British India, It is hereby enacted as follows —

I—Preliminary

Short title
Local extent

1 This Act may be called 'The Indian Weights and Measures of Capacity Act, 1871,' and extends to the whole of British India

II—Standards

Standard of weight

2 The primary standard of weight shall be called a seer, and shall be a weight of metal in the possession of the Government of India, equal when weighed in a vacuum, to the weight known in France as the Kilogramme des Archives

Units of weights and measures of capacity

3 The units of weights and of measures of capacity shall be—

for weights, the said seer,

for measures of capacity, a measure containing one such seer of water at its maximum density, weighed in vacuum

Special weights and measures of capacity may be authorized

4 The Governor General in Council may, from time to time, by notification in the *Gazette of India*, declare the magnitude and denominations of the weights and measures of capacity, other than the said units to be authorized under this Act

Provided that every such weight or measure of capacity shall be an integral multiple or integral sub-multiple of one of the units aforesaid

The Governor General in Council may, in like manner, revoke such notification

Unless it be otherwise ordered in any such notification, the sub divisions of all such weights and measures of capacity shall be expressed in decimal parts

Districts how defined

5 The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define the limits of districts for the purposes of this Act

Sub districts how defined

The Local Government may, from time to time by notification in the official Gazette, define the limits of sub-districts for the purposes of this Act

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* This Act has been repealed in the Central Province by C P Act of II of 1928

6 The Governor General in Council may provide, for such districts as he thinks fit, proper primary standards and sets of the said authorized weights and measures of capacity

Primary standards to be provided

Such standards shall, for the purposes of this Act, be deemed the standards for such districts.

7 The Local Government may provide, for such sub districts as it thinks fit, copies of such of the said authorized weights and measures of capacity as shall be necessary to serve as local standards in such sub districts

Local standards to be provided

Such local standards shall be deemed correct, until they are proved to be otherwise

III — Use of new Weights and Measures of Capacity.

8 Whenever the Governor General in Council considers that proper standard weights and measures of capacity have been made available for the verification of the weights and measures of capacity to be used by any Government office or municipal body or railway company the Governor General in Council may, by notification in the *Gazette of India*, direct that after a date to be fixed therein, all or any of the weights and measures of capacity authorized as aforesaid shall be used in dealings and contracts by such office, body or company, and may in like manner, from time to time, alter or revoke such direction

Use of new weights and measures of capacity in Government offices, etc

9 After the date fixed in any notification under section 8 all dealings and contracts had and made by the officers, bodies or companies, mentioned in such notification, for any work to be done or goods to be sold or delivered by weight or measure of capacity, shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the weights or measures of capacity directed in such notification to be used by such officers, bodies or companies

Contracts by weight or measure of capacity

IV — Wardens

10 The Governor General in Council and the Local Government, respectively, shall appoint Wardens for the custody of the primary and local standards and sets of authorized Weights and Measures of Capacity hereinbefore mentioned

Appointment of Wardens

The Governor General in Council, or the Local Government, respectively, may, at any time, suspend or remove any such Warden and appoint another

11 The Governor General in Council may, from time to time, make rules consistent with this Act for regulating the following matters :—

Power to make rules

(*a*) the appointment of Wardens,

(*b*) the guidance of Wardens in all matters connected with the performance of their duties,

(*c*) the provision, replacement, custody and use of the standards,

(*d*) the method of verifying local standards and weights, weighing machines and measures of capacity authorized under this Act, and balances, and of certifying such verification provided that such verification shall not be required to be made oftener than once in two years,

(e) the errors which may be tolerated in weights weighing machines and measures of capacity authorized under this Act and in balances,

(f) the shapes proportions and dimensions to be given to weights, weighing machines and measures of capacity authorized under this Act, and to balances and the materials of which they may be made,

(g) marking weights and measures of capacity authorised under this Act with their several denominations,

(h) the conditions under which Government offices municipal bodies and railway companies shall be subject to inspection and verification of the weights weighing machines and measures of capacity authorized under this Act, and of the balances used by them,

(i) the fees to be paid for verifying correcting and certifying the verification of weights weighing machines and measures of capacity authorized under this Act and of balances

Publication of rules

12 Such rules shall be published in the *Gazette of India*

Rules, when specially applied to have the force of law

And the Governor General in Council may, by notification in the *Gazette of India* declare that, from and after a day to be named therein all or any of the said rules shall come into force in respect of any Government office municipal body or railway company and thereupon to the extent specified in such notification, such rules or rule shall have the force of law

Officers of Government and others to comply with rules

13 All officers of Goverment municipal officers and officers and servants of railway companies shall comply with such rules so far as they concern them and pay such fees as the said rules shall prescribe

Warden may refuse to verify or correct things unfit

14 The Warden may deface or render incapable of use or refuse to verify correct or mark, anything brought to him for verification or correction, which appears to him unfit for verification or correction

Exercise of any of Warden s powers

15 Any of the powers and duties conferred and imposed by this Act on a Warden may be exercised and performed by any other officer whom the Local Government may, from time to time appoint

Counterfeiting Warden s marks

16 Whoever knowingly counterfeits any mark used by a Warden under section 11 shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine

Tables of equivalents

17 The Local Government may, from time to time prepare tables of the equivalents of weights and measures of capacity, other than those authorized under this Act in terms of the weights and measures of capacity so authorized and the equivalents so stated after notification in the local official Gazette, shall be deemed the true equivalents

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THE WORKMEN'S COMPENSATION ACT, 1923

ACT NO. VIII OF 1923.

Received the assent of the Governor General of India on the 5th March 1923

An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident

WHEREAS it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident, It is hereby enacted as follows —

Notes —The scope of this Act is strictly limited The parties could not by any form of estoppel or agreement enlarge the operation of the Act so as to bring within it other cases, or to extend the limited jurisdiction in those cases to which the act is confined *Dutton* v *Sneyd Bycars Co Ltd* (1919) W N 297=36 T L R 54=148 L T J 156=(1920) 1 K B 414=89 L J K B 85, 122 L T 333, see also *Standing* v *East ward & Co* (1912) 5 B W C C 268

Amendment —Drastic amendment of this Act was made by Act 15 of 1933 day of January, 1934, but sections 2 3 4 to force on the 1st day of July 1934 and ect of compensation payable on account of ccident occuring on or after the first day of V of 1933

CHAPTER I

PRELIMINARY

Short title, extent and commencement

1 (1) This Act may be called the Workmen's Compensation Act, 1923

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

(3) It shall come into force on the first day of July, 1924

Notes —This Act has no application in cases of injuries by accident occurring beyond British India *Vide Hicks* v *Monton* 125 L T 135, *Tomalin* v *Pearson*, (1900) 2 K B 61

Definitions

2 (1) In this Act, unless there is any thing repugnant in the subject or context,—

(*a*) "adult" and "minor" mean respectively a person who is not and a person who is under the age of fifteen years,

(*b*) "Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20,

(*c*) "compensation" means compensation as provided for by this Act,

* (*d*) "dependant", means any of the following relatives of a deceased workman, namely —

(*i*) a wife, a minor legitimate son, an unmarried legitimate daughter or a widowed mother, and

(*ii*) if wholly or in part dependant on the earnings of the workman at the time of his death a husband, a parent other than a widowed mother, a minor a daughter legitimate or wed, a minor brother, an in law, a minor child of a deceased son, or where no parent of the workman is alive, a paternal grand parent,"

* Substituted by Act XV of 1933

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship means such other person while the workman is working for him,

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and where the disablement is of a permanent nature such [illegible] employment which he was [illegible] that every injury specified [illegible] partial disablement,

(h) "prescribed" means prescribed by rules made under this Act,

(i) "qualified medical practitioner" means any person registered under the Medical Act, 1858,* or any Act amending the same, or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners or, in any area where no such last mentioned Act is in force, any person declared by the Local Government, by notification in the local official Gazette, to be a qualified medical practitioner for the purposes of this Act,

(j) [*Omitted by Act XV of 1933*]

(k) "seaman" means any person forming part of the crew of any† ship, but does not include the master of "the"‡ ship

(l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent,

[illegible] benefit which is capable of being [illegible] allowance or the value of any [illegible] by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment,

(n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

(i) a railway servant as defined in section 3 of the Indian Railways Act, 1890,§ not permanently employed in any administrative, district or sub divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) employed,‖ on monthly wages not exceeding three hundred rupees, in any such capacity as is specified in Schedule II,

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* 21 and 22 Vict, C 90
† Certain word after this omitted by Act 15 of 1933
‡ Substituted by Act 15 of 1933
§ IX of 1890
‖ Certain words after this repealed by Act XV of 1933 have been omitted

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of His Majesty s naval military or air forces or of the Royal Indian Marine Service, and any reference to a workman who has been injured shall where the workman is dead include a reference to his dependants or any of them

(2) The exercise and performance of the powers and duties of a local authority or of any department of the Government shall for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department

"*(3) The Governor General in Council after giving by notification in the *Gazette of India*, not less than three months notice of his intention so to do may by a like notification and to Schedule II any class of persons employed in any occupation which he is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply to such classes of persons

Provided that in making such addition the Governor General in Council may direct that the provisions of this Act shall apply to such class of persons in respect of specified injuries only."

Notes—This section corresponds to section 13 of the English Workmen's Compensation Act, 1906 The definition of the word "dependant has been slightly departed from the English Act

man is not bound by any agreement she was not a party to the agree 9 L J P C 73, see also *Williams* ndant of a deceased workman has a direct and independent statutory right against his employer and a decision of a previous litigation between a workman and his employer is not binding on the dependants *Herper* v *Dick* (1921), W N 7, see also *Tucker* v *Oldbury* (1912) 2 K B 317

Wages—Where a workman worked only for eighteen days before his death compensation was awarded on the basis of the applicant s average weekly earnings during that period *Gibs* v *Belford* 72 L J K B 569=(1903) 1 K B 843, see also *Jones* v *Ocean* (1899) 2 Q B 124, *James* v *Ocean Coal Co*, 73 L J K B 915=(1904) 2 K B 213 The fact that average weekly earnings of the workmen after the accident would have been greater but for the injury, cannot be taken into consideration *Pomphery* v *Southwork*, 70 L J Q B 909=(1901) 1 K B 80, *Chandler* v *Smith* (1899) 2 Q B 506, *Irons* v *Davis*, (1899) 2 Q B 'but earnings in the employment *Pen* v *Spiers and Pond* (1908) mount, whether in money or in nployers *Hougton* v *Sutton* 70 L J K B 61

CHAPTER II

Workmen's Compensation

3 (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter

Employer's liability for compensation

Provided that the employer shall not be so liable—

(*a*) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding "seven' * days,

* Substituted by Act 15 of 1933

(*b*) in respect of any *injury, not resulting in death caused by * an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman ,†

(2) If a workman employed in any employment involving the handling of wool, hair bristles, ' or animal carcasses or parts of such carcasses, or in the loading, unloading or transport of any merchandise, or in any work in connection with animals infected with anthrax, ‡ contracts the disease of anthrax, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment

Explanation —For the purposes of this sub section a period of service shall be deemed to be continuous which has not included a period of service under any other employer

(3) The Governor General in Council, after giving, by notification in the *Gazette of India*, no less than three month s notice of his intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments

(4) Save as provided by sub sections (2) and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is § directly attributable to a specific injury by accident arising out of and in the course of his employment

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person , and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(*a*) if he has instituted a claim to compensation in respect of the injury before a Commissioner , or

(*b*) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act

Injury.—Injury by over strain or overexertion sustained by a man in doing his work is injury by 'accident' within the meaning of the Act *Fenton* v *Thorly* (1903) A C 443=72 L J K B 687 , *Stewart* v *Wilton s and Clyde Coal Co Ltd* 5 Fraser, 120

Accident—The word accident involves the idea of something fortuitous and unexpected *Henry* v *White*, 69 L J Q B 188=(1900) 1 Q B 481 , see also

* *Substituted by Act 15 of 1933*
† Certain words after this repealed by Act V of 1929 are omitted
‡ Substituted by Act 29 of 1926
§ Certain words after this repealed by Act 15 of 1933 have been omitted

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of His Majesty's naval military or air forces or of the Royal Indian Marine Service, and any reference to a workman who has been injured shall, where the workman is dead include a reference to his dependants or any of them

(2) The exercise and performance of the powers and duties of a local authority or of any department of the Government shall for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department

"*(3) The Governor General in Council after giving by notification in the *Gazette of India*, not less than three months' notice of his intention so to do may by a like notification, and to Schedule II any class of persons employed in any occupation which he is satisfied is a hazardous occupation and the provisions of this Act shall thereupon apply to such classes of persons

Provided that in making such addition the Governor General in Council may direct that the provisions of this Act shall apply to such class of persons in respect of specified injuries only."

Notes—This section corresponds to section 13 of the English Workmen's Compensation Act, 1906 The definition of the word "dependant" has been slightly departed from the English Act

Dependant—A n de of a de ... an is not bound by any agreement made d ... she was not a party to the agreement ... L J P C 73, see also *Williams* v *Vau.* ... ndant of a deceased workman has a direct and independent statutory right against his employer and a decision of a previous litigation between a workman and his employer is not binding on the dependants *Herper* v *Dick* (1921), W N 7, see also *Tucker* v *Olabury*, (1912) 2 K B 317

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* Substituted by Act 15 of 1933

(*b*) in respect of any "injury, not resulting in death, caused by * an accident which is directly attributable to—

(*i*) the workman having been at the time thereof under the influence of drink or drugs, or

(*ii*) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(*iii*) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman ,†

(2) If a workman employed in any employment involving the handling of wool, hair bristles, ' or animal carcasses or parts of such carcasses, or in the loading, unloading or transport of any merchandise, or in any work in connection with animals infected with anthrax, ‡ contracts the disease of anthrax, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Schedule III, contracts any disease specified therein as an occupational dise the disease shall be deemed this section and, unless the ec dee ned to have arisen out of and in the course of the employment

Explanation —For the purposes of this sub section a period of service shall be deemed to be continuous which has not included a period of service under any other employer

(3) The Governor General in Council, after giving, by notificatin in the *Gazette of India*, no less than three month's notice of his intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments

(4) Save as provided by sub sections (2) and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is † directly attributable to a specific injury by accident arising out of and in the course of his employment

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person , and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(*a*) if he has instituted a claim to compensation in respect of the injury before a Commissioner , or

(*b*) if an agreement has been come to between the workman and his employer providi g for the payment of compensation in resp ct of the injury in accordance with the pro visions of this Act

Injury.—Injury by over strain or overexertion sustained by a man in doing his work is injury by 'accident ' within the meaning of the Act *Fenton* v *Thorly* (1903) A C 443=72 L J K B 687 , *Stewart* v *Wilton s and Clyde Coal Co Ltd* 5 Fraser, 120

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* Substituted by Act 15 of 1933
† Certain words after this repealed by Act V of 1929 are omitted
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§ Certain words after this repealed by Act 15 of 1933 have been omitted

Clover v *Hughes*, (1901) A C 242 Injury by overstrain or overexertion sustained by a man in doing his work is injury by "accident" *Fenton* v *Thorly*, (1903) A C 443, see also *Boardman* v *Scott* 71 L J K B 3 In the case of death by blood poisoning the death is the result of an injury by accident *Thompson* v *Ashington* 84 L T 412 'A man may suffer an accident and be entitled to recover in respect of the injury caused by the accident within the meaning of the Workmen's Compensation Act although the strain which sets up and puts in motion the cause of his death may arise in the ordinary exercise of his work which he is employed to do and is not of a special or momentary character *Firline* v *Hutton* 96 L J K B 357 (C A) see also 29 Bom L R 1544, 29 Bom L R 349

Sub section (2)—The causal relation betweeen the employment and the disease must be shown (1920 3 K B 544

Sub section (5)—A mere presentation of a plaint to a person who is not a proper officer is not institution 18 W R 72, 6 B H C R 254

Amount of compensation

*'4 (1) Subject to the provisions of this Act the amount of compensation shall be as follows namely —

Where death results from the injury—

(*i*) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV— the amount shown against such limits in the second column thereof, and

(*ii*) in the case of a minor—two hundred rupees,

B Where permanent total disablement results from the injury—

(*i*) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and

(*ii*) in the case of a minor—twelve hundred rupees,

C Where permanent partial disablement results from the injury—

(*i*) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(*ii*) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury

Explanation – Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries

D Where temporary disablement, whether total or partial, results from the injury, a half monthly payment payable on the sixteenth day after the expiry of a waiting period of seven days from the date of the disablement and thereafter half monthly during the disablement or during a period of five years whichever period is shorter,—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—of the sum shown against such limits in the fourth column thereof, and

(ii) in the case of a minor—of one half of his monthly wages subject to a maximum of thirty rupees

Provided that —

(*a*) there shall be deducted from any lump sum or half monthly payment to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half monthly payment, as the case may be and

* Substituted by Act 15 of 1933

(*b*) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workmen before the accident exceeds half the amount of such wages which he is earning, after the accident "

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half month

Amendment by Act 15 of 1933—The effect of these amendments would be to enhanc ... death and permanent disablement in the ... n (*i e*, those getting less than Rs 17 8 0) ... those getting more than Rs 80 a month) compensation for temporary disablement would also be substantially enhanced for most workmen —*Notes on Clauses*

Notes—A minor was employed in hewing coal and while so employed a peice of coal worked itself into his knee with the result that blood poisoning set in and the workman died, *Held* that the death was the result of an 'injury by accident" *Thomson* v *Ashington*, 84 L T 412, see also *Lloyd* v *Sugg*, 69 L J Q B 190= (1900) 1 Q B 481 Where a workman's injuries were caused by an accident

A C 242 A claim for compensation is not maintainable where the death or ... accident *Honor* v *Painter*, ... t to compensation, the test ... l result of the injury, but ... 292

*5 (1) For the purposes of 'this Act'† the monthly wages of a workman shall be calculated as follows, namely —

Method of calculating wages

(*a*) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that petiod,

‡ "(*b*) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be deemed to be the average monthly amount which during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality"

‡ (*c*) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period

* Section 5 has been numbered as sub section (1) of section 5 and sub section (2) has been added by Act V of 1929

† Substituted by Act 15 of 1933

‡ The new clause (b) has been inserted and clause (c) has been lettered clause (d) by Act 15 of 1933

* *Explanation* — A period of service shall, for the purposes of "this sub section"† be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days

Amendment —The existing section 5 describes the manner in which monthly wages of workmen shall be calculated for the purpose of section 4 The amendment is designed to extend the same method to the calculation of the wages for the purposes of clause (n) sub section 2 and of sub section 3 of that section —*Statement of Objects and Reasons*

Notes —This section corresponds to Schedule 1, para (2) of the British Workmen's Compensation Act, 1906

Review

6. (1) Any half monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate

(2) Any half monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased decreased or ended, or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half monthly payments

Notes —It is not competent for a County Court Judge, sitting as arbitrator under the English Act to prophesy as to how long the incapacity for work of an injured workman will last, and to anticipate what may happen in the future in the workman's condition It is for the employer who desires to obtain on the grounds of change of circumstances a review of the weekly payment which has been made payable to the injured workman to establish that such change has taken place, and the onus of so proving ought not to be shifted to the workman *Walton* v *South Kirby*, 5 B W C C 640 Although a county Court Judg has no jurisdiction to make an ... ompensation under the Work ... s incapacity has ceased, he has ... mpensation shall finally cease ... C 242=81 L J K B 541 It ... ompletely recovered before the ... compensation should end as ... merely from the date of the ... (1914) W N 232

Commutation of half monthly payments

7 Any right to receive half monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months on the application of either party to the Commissioner, be redeeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be

Notes —An agreement between an injured workman and his employer for the settlement of all claims to compensation under the Workmen's Compensation Act, 1906, by the payment of a lump sum apart from the provisions of this Act relating to agreements for the redemption of a weekly payment is void as being contracting out of the Act *Russel* v *Rudd*, (1923) A C 309=92 L J K B 429

8 (1) "No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to

* Before this the proviso and after this sub-section (2) being repealed by Act ...

... after the repeal of sub-section (2) by Act 15 ... and misleading Probably through over ...

a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation

Provided that, in the case of a deceased workman an employer may make to any dependant advances on account of compensation not exceeding an aggregate of one hundred rupees and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer '

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him '

(4) On the deposit of any money under sub section (1) "as compensation in respect of a deceased workman † the Commissioner 'shall deduct ‡ therefrom the actual costs of the workman's funeral expenses to an amount not exceeding "twenty five rupees '‡ and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of compensation If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists he shall repay the balance of the money to the employer by whom it was paid The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made

§ '(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant

'(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability such sum may be invested applied or otherwise dealt with for the benefit of the woman or of such person during his disability, in such manner as the Commissioner may direct, and where a half monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman

(8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that on account of neglect of children on the part of a parent or on account of the variation of their circumstances of any dependant or for any other sufficient cause an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order

* This proviso was substituted for provisos (a) and (b) by Act 15 of 1933
† Inserted by Act V of 1929
‡ Substituted by Act 15 of 1933
§ Substituted by Act V of 1929

should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him

*(9) "Where the Commissioner varies any order under sub section (8) by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in section 31"

Notes—The right of dependants to compensation under this Act, where death ultimately results from the injury, is a separate and independent right and cannot be released by the workman *Williams* v *Vauxhall*, (1927) 2 K B 433 All the dependants must present themselves before the Commissioner before distribution takes place *Kerr* v *Stewart*, 43 Ir L T 119 The Commissioner is to settle the amount to be distributed *Daniels* v *Ocean Coal Co*, (1900) 2 Q B 250, *Manchester* v *Carlton Iron Co*, 89 L T 730 After the death of the widow, the Commissioner can allot her share to the children *Ivey* v *Ivey*, (1912) 2 K B 118

Object of the change—"Sub section (1) of section 8 as at present worded is liable to misinterpretation The amendment seeks to clarify the real intention which is that all payments to dependants of the deceased workman must be made through the Commissioner and not directly to the dependants The opportunity has been taken to provide that any lump sum payable as compensation to a minor should also be paid similarly through the Commissioner The revised section further provides for —(a) the protection of lump sums payable to a woman or to a person (other than a minor) under any legal disability, (b) the prevention of deposits of trivial amounts and (c) the investment of sums payable as compensation to women It is also proposed to remove the apparent inconsistency between the existing sub section (5) and the existing sub section (2) and between sub-section (1) which might be read as requiring the Commissioner to pay the full sum to a dependant and sub section (4) which enables him to deduct funeral expenses —*Statement of Objects and Reasons.*

Compensation not to be assigned, attached or charged

9. Save as provided by this Act, no lump sum or half monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same

Notes—Where an applicant under this Act appeals unsuccessfully against the amount of compensation awarded to him the costs of appeal will be set off against his costs in the Court below *Case Colonial Wharves* 53 W R 514 An employer who has been found to liable pay compensation by way of weekly payments under the Act to a workman is not entitled to set off against those payments a sum awarded to him as costs against a workman in an application for the diminution of the weekly payments *Roswel Gas Coal Co* v *M' Vicar* 7 F 293

Notice and claim

10. (1) No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been instituted within six months of the occurrence of the accident or, in case of death, [illegible]

Provided [illegible] a disease in respect of which the [illegible] are applicable the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

* Inserted by Act V of 1929

* 'Provided, further, that the want of or any defect or irregularity in a notice shall not be a bar to the maintenance of proceedings,—

(*a*) if the claim is made in respect of the death of a workman resulting from an accident which occurred in the premises of the employer or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(*b*) if the employer had knowledge of the accident from any other source at or about the time when it occurred

Provided, further that the Commissioner may admit and decide any claim to compensation in any case nowithstanding that the notice has not been given or the claim has not been instituted, in due time as provided in this sub section, if he is satisfied that the failure so to give the notice or institute the claim, as the case may be was due to sufficient cause

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened and shall be served on the employer or upon 'any one of† several employers, or upon any person directly responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed

*' (3) The Local Government may require that any precribed class of employers shall maintain at their premises at which workmen are employed a notice book in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting *bona fide* on his behalf

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to the residence or any office or place of business of the person on whom it is to be served or where a notice book is maintained by entry in the notice book

Notes —This section corresponds to section 2 of the British Workmen's Compensation Act, 1906 Particulars of an accident to a workman arising out of and in the course of his employment entered by the employer's manager in a book which the employers have provided him for that purpose in the presence of the workman by whom the particulars were given constitute a notice *Stevens* v *Insoles* (1912) 1 K B 36 A house maid injured her knee She continued to receive her full wages for a year and seven months being ill for a good part of the time She was then discharged and brought proceedings for compensation She had made no claim for compensation because as the county Court Judge found she did not know of the Act of Parliament, *Held* that this was not a mistake or other reasonable cause for not making claim *Judd* v *Metropolitan Asylum Board* 5 B W C C 420, see also *Egerton* v *Moore* (1912) 2 K B 308

‡'10A (1) ,Where a Commissoner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice a statement in the prescribed form giving the circumstances attending the death of the workman and indicating whether in the opinion of the employer he is or is not liable to deposit compensation on the account of the death

Power to require from employers statement regarding fatal accident

* Substituted by Act 15 of 1933
† The words within quotations have been substituted by Act 7 of 1924
‡ Inserted by Act 15 of 1933

(2) If the employer is of opinion that he is liable to deposit compensation he shall make the deposit within thirty days of the service of the notice

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability

(4) Where the employer has so disclaimed liability the Commissioner, after such inquiry as he may think fit may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit "

Reports of fatal accidents

* "10B (1) Where, by any law for the time being in force, notice is required to be given to any authority, by or behalf of an employer, of any accident occurring on his premises which results in death, the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the death

Provided that where Local Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice

(2) The Local Government may, by notification in the local official gazette, extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub section, and may by such notifications specify the person who shall send the report to the Commissioner "

Medical examination

11 (1) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half monthly payment under this Act shall, if so required, subm[illegible] time to time :

[illegible] be required to submit himself for examin[illegible]rwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed

(2) If a workman on being required to do so by the employer under sub section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself

(3) If a workman, before the expiry of the period within which he is liable under sub section (1) to be required t[illegible] voluntarily leaves without having bee[illegible] which he was employed, his right to [illegible] returns and offers himself for such examination

(4) Where a workman, whose right to compensation has been suspended under sub section (2) or sub section (3) dies without having submitted himself for medical examination as required by either of those sub-sections the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman

(5) Where under sub section (2) or sub section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the

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* Inserted by Act 15 of 1933

waiting period shall be increased by the period during which the suspension continues

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal, failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner, and compensation, if any shall be payable accordingly

Notes —This section corresponds to paras 4, 14, 18 and 20 of Schedule I of the Workmen's Compensation Act, 1906 Apart from special circumstances in any parti-

burden of proof is on the employer to show that the workman's incapacity is due to his unreasonable refusal to undergo a surgical operation which might materially improve his condition *Fife Coal Co* v *Cant*, (1920) 90 L J P 69

Contracting

12 (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him, and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, "or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation"* and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal

(4) This section shall not apply in any case where the accident occured elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under this control or management

Sub section (4) —As regards the meaning of the word 'premises," *Vide Ditmar* v *Ship* 78 L J K B 523=(1909) 1 K B 389

Remedies of employer against stranger

13 Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to

* Inserted by Act XV of 1933

pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid

Notes — This section corresponds to s 6 (2) of the Workmen's Compensation Act 1906 The words circumstances creating a legal liability mean not merely circumstances which in fact create a legal liability but circumstances which it is alleged create that liability and are the foundation of an action for negligence *Page* v *Burtwell* (1908) 2 K B 758=77 L J K B 1060

14 (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up the rights of the employer against the insurers as respects that liability shall notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer

Insolvency of employer

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation

(3) Where in any case such as is referred to in sub section (1) the contract of the employer with the insurers is void or voidable by reason of non compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub section shall apply as if the contract were not void or voidable and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings

(4) There shall be deemed to be included among the debts which under section 49 of the Presidency towns Insolvency Act 1909 * or under section 61 of the Provincial Insolvency Act 1920,† or under section 230 of the Indian Companies Act 1913 ‡ are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or th [illegible] up, as the case may be, and those

(5) Where [illegible] the amount due in respect thereof shall for the purposes of this section be taken to be the amount of the lump sum for which the half monthly payment could, if redeemable be redeemed if application were made for that purpose under section 7 and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof

(6) The provisions of sub section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being

* III of 1909 † V of 1920 ‡ VII of 1913

wound up has entered into such a contract with insurers as is referred to in sub-section (1)

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company

Notes —This section corresponds to section 5 of the British Workmen's Com

effect of this section is that where an employer has entered into a contract with any insurers in any respect of any liability under the Act in the event of the employer becoming bankrupt, or being a company having commenced to be wound up the claim of a workman for compensation is against the insurers only *Re Pethick Dix* (1915) 1 Ch 26

Special provisions relating to masters and seamen

15 This Act shall apply in the case of workmen who are masters of * ships or seamen subject to the following modifications namely —

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship be served on the master of the ship as if he were the employer but where the accident happened and the disablement commenced on board the ship it shall not be necessary for any seaman to give any notice of the accident

(2) In the case of the death of a master or seaman the claim for compensation shall be made within six months after the news of the death has been received by the claimant or where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost

(3) Where an injured master or seaman is dischared or left behind in any part of His Majesty s dominions or in a foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Governor General in Council or any Local Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular officer before whom it is made,

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross examine the witness, and

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made

(4) In the case of the death of a master or seaman leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being in British India relating to merchant shipping liable to pay the expenses of burial of the master or seaman, return to the employer the full

* Certain word after this repealed by Act 15 of 1933 has been omitted

amount of the compensation deposited under sub-section (1) of section 8 without making the deduction referred to in sub section (4) of that section

(5) No 'half monthly payment'* shall be payable in respect of the period during which the owner of the ship is under any law in force for the time being in British India relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman

Notes —A co-owner of a ship employed as a master is nevertheless a workman under this section *Sharpe* v *Carswell* (1910) S C 391 A vessel was sailed on the "third" or sharing system under which the owner took one third of the gross freights the master taking the other two thirds The owner found the vessel and gear and paid for repairs and oil for the lights The master engaged what crew he pleased victualled the vessel, and paid the crew and harbour dues making what contract he thought fit to take cargo to any place he pleased. The vessel went down with all hands and certain dependants of the master claimed compensation under the Act *Held* that there was no contract of service between the owner and the master *Boon* v *Quance*, 102 L T 443

16 The Governor General in Council may, by notification in the *Gazette of India* direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation together with such other particulars as to the compensation as the Governor General in Council may direct

Returns as to compensation

Notes —This section corresponds to section 12 of the British Workmen's Compensation Act, 1906

17 Any contract or agreement whether made before or after the commencement of this Act whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act

Contracting out

Notes —This section corresponds to section 3 of the British Workmen's Compensation Act, 1906 An agreement between an injured workman and his employer for the settlement of all claims to compensation under this Act, by payment of a lump sum, apart from the provisions of the Act relating to agreement for the redemption of a weekly payment is void as being a contracting out of the Act *Russell* v *Rudd* (1923) A C 309 This section is applicable to agreements made before or after the accident *Clowley* v *Carlton*, (1918) A C 744

18 Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory, a certificate granted in respect of such a person under section 7 or section 8 of the Indian Factories Act, 1911 † before the occurrence of the injury shall be conclusive proof of the age of such person

Proof of age

Notes —Under section 6 of the Indian Factories Act (XII of 1911) the Local Government may appoint such qualified medical practitioners as it thinks fit to be a certifying surgeon for the purpose of his Act within such limits as it may assign to them respectively Under section 7 such certifying surgeon after examining a workman grant a certificate in the prescribed form stating his age as nearly as it can be ascertained from such examination.

‡"18A (1) Whoever—

* Substituted by Act VII of 1924 † XII of 1911
‡ Inserted by Act 15 of 1933

Penalties

(a) fails to maintain a notice book which he is required to maintain under sub section (3) of section 10, or,

(b) fails to send to the commissioner a statement which he is required to send under sub section (1) of section 10A or,

(c) fails to send a report which he is required to send under section 10B, or,

(d) fails to make a return which he is required to make under section 16, shall be punishable with fine which may extend to one hundred rupees

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognisance of any offence under this section, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed"

CHAPTER III

Commissioners

Reference to Commissioners

19 (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall in default of agreement, be settled by a Commissioner

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act

Notes —This section corresponds to section 1 (3) of the British Workmen's Compensation Act 1906 To a claim for compensation under the Workmen s Compensation Act, 1906, the employers set up a discharge signed by the injured workman acknowledging receipt of a payment of £2 1s 2d as in full satisfaction and is discharge of all claims past and future competent to him in consequence of his injuries The arbitrator found that the workman had signed the discharge in the belief that it was merely a receipt for past due compensation He also found that the employer s cashier who took the discharge believed that the workman had fully recovered while in point of fact he was still totally incapacitated On these findings he held that the discharge was not a bar to the recovery of compensation, and found the workman entitled to compensation *Ellis v Lochgelly Iron & Coal Co*, (1909) A C 1278

Appointment of Commissioners

20 (1) The Local Government may, by notification in the local [illegible]

*(2) Where more than one Commissioner has been appointed for local area the Local Government may, by general or special order, regulate the distribution of business between them

*(3) Any Commissioner may for the purpose of deciding any matter referred to him for decision under this Act choose one or more person possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry

*(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code

* Sub section (2) has been inserted and sub sections (2) and (3) have been renumbered by Act 15 of 1933

Notes -Every Commissioner is a public servant within the meaning of s 21 of the Indian Penal Code

21. (1) Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before "a Commissioner * for the local area in which the accident took place which resulted in the injury

Value of proceedings and transfer

Provided that where the workman is the master of a † ship or a seaman, any such matter may be done by or before the Commissioner for the local area in which the owner or agent of the ship resides or carried on business

‡(2) If a Commissioner is satisfied by any party to any proceedings under this Act pending before him that such matter can be more conveniently dealt with by any other Commissioner, whether in the same province or not, he may subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so shall forthwith transmit to such other Commissioner all documents relevent for the decision of such matter and, where the matter is transferred for disposal shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings

Provided that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lump sum shall be transferred for disposal under this sub section to a Commissioner in the same province save with the previous sanction of the Local Government or to a Commissioner in another province save with the previous sanction of the Governor General in Council, unless all the parties to the proceedings agree to the transfer

‡(3) The Commissioner to whom any matter is so transferred shall subject to rules made under this Act, inquire thereinto and, if the matter was transferred for report return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him

‡(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report

(5) The local Government may transfer any matter from any commissioner appointed by it to any other commissioner appointed by it"

22 (1) No application for the settlement of any matter by a Commissioner 'other than an application by a defendant or defendants for compensation ‡ shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement

Form of application

(2) 'An application to Commissioner ‡ may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain in addition to any particulars, which may be prescribed the following particulars, namely —

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims,

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission,

(c) the names and addresses of the parties, and

* Substituted by Act 15 of 1933
† Certain word after this repealed by Act 15 of 1933 has been omitted
‡ Inserted by Act 15 of 1933

(*d*) "except in the case of an application by dependants for compensation"* a concise statement of the matters on which agreement has and 'of' † those on which agreement has not been come to

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner

Notes—*Vide Crone* v *Donaldson Line*, (1916) W C and Ins Rep 281

*"22 A (1) When any sum deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice

Power of Commissioners to require further deposit in cases of fatal accident.

(2) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency'

23. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, [and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898]‡

Powers and procedure of Commissioners

Notes—This section corresponds to Workmen's Compensation Act 1906 Sch II, paras (3), (12) A Commissioner is entitled to take evidence and determine the question even in the absence of the employer *United Collieries* v *Gavin*, 37 S L R 47 He must base his finding on evidence *Gray Dawes & Co* v *Reid*, (1913) 6 B W C C 42=108 L T 53 The habits of the deceased workman can be proved by evidence *Joy* v *Philips Mills & Co* (1916) 1 K B 849

Amendment—This amendment is designed to vest Commissioners with the same powers in respect of the prosecution of persons for perjury as are possessed by Civil Courts generally—*Statement of Objects and Reasons*

24 Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or other person authorized in writing by such person

Appearance of parties

25 The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record

Method of recording evidence

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record

Provided, further, that the evidence of any medical witness shall be taken down as nearly as may be word for word

26 All costs incidental to any proceedings before a Commissioner shall subject to rules made under this Act be in the discretion of the Commissioner

Costs

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* Substituted by Act 15 of 1933 † Substituted by Act 37 of 1925
‡ Inserted by Act V of 1929

Notes—This section corresponds to para (4) of Schedule II of the Workmen's Compensation Act 1906. In the matter of awarding costs the Commissioner has got absolute discretion. *Kloostrim* v *Vickers Ltd* (1918) 87 L J (K B) 754, *Rigby* v *Cox*, (1904) 2 K B 203. If he so thinks fit, he can award no cost to a successful party. *Ford* v *Gibberstone Co* (1919) 12 B W C C 32.

27 A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

Power to submit cases

28 (1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half monthly payment or otherwise, or where any compensation has been so settled as being payable * to a woman or a person under a legal disability ‡ a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner.

Registration of agreements

Provided that—

(*a*) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned ,†

(*c*) the Commissioner may at any time rectify the register ,

(*d*) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half monthly payment or otherwise, or an agreement as to the amount of compensation payable "to a woman or person under a legal disability ‡ ought not to be registered by reason of the inadequacy of the sum or amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement "and may make such order § including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.

Notes—Where there is no evidence of any such agreement having been entered into the memorandum should not be recorded, *Godbold* v *London County Council* 11 L T 691, see *Philips* v *Vickers, San* and *Maxim* (1912) 1 K B 16, *Hart Shorn* v *Coppice Colliery* 6 L T 609, *Madden* v *Gosts Executors*, (1916) (1K B 76. The precise terms of agreement should be recorded *M Lean* v *Allan* (1912) W C & Ins Rep 72.

29 Where a memorandum of any agreement, the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

Effect of failure to register agreement

30 (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely —

Appeals

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* Substituted ... Act V of 1929

... 1929

‡ ... substituted of Act 7 of 1924

(*a*) an order awarding as compensation a lump sum whether by way of redemption of a half monthly payment or otherwise or disallowing a claim in full or in part for a lump sum ,

(*b*) an order refusing to allc [illegible] ayment ,

(*c*) an order providing for [illegible] among the dependants of a deceased worki [illegible] of a person alleging himself to be such dependant ,

(*d*) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub section (2) of section 12 , or

(*e*) an order refusing to register a memorandum of agreement or registering [illegible] istration of the same subject to conditions ;

[illegible] lie against any order unless a substantial [illegible] appeal and, in the case of an order other than an order such as is referred to in clause (*b*), unless the amount in dispute in the appeal is not less than three hundred rupees

Provi[illegible] the parties have agr[illegible] in which th order of [illegible] the parties

'Provided further, that no appeal by an employer under clause (*a*) shall [illegible] unless the memorandum of appeal is accompanied by a certificate [illegible] Commissioner to the effect that the appellant has deposited [illegible] the amount payable under the order appealed against "*

(2) The period of limitation for an appeal under this section shall [illegible] sixty day

(3) The provisions of section 5 of the Indian Limitation Act, 1908 [illegible] be applicable to appeals under this section

Notes—The appellate Court is not bound to accept the finding o[illegible] [illegible] *Lee* v *Bess*[illegible] [illegible] 764 , *Be*[illegible] [illegible] ion of law [illegible] in an appeal [illegible] *Stevens* v [illegible] *Co* (1918) 2 K B 69 A retrial can be ordered by appellate Court [illegible] *Summer*, (1922) K B 170 , *Smith* v *Hardman and Holden Ltd*, [1913] [illegible] 459 An appeal against cost not competent *Josey* v *Vincent*, (1916) [illegible] 474 , *Johnson* v *Newton* (1913) 2 K B 111

Withholding of certain payment pending decisions of appeal

* '30 A Where an employer makes an appeal under claus[illegible] section (1) of section 30 the Commis[illegible] and if so directed by the High [illegible] pending the decision of the app[illegible] payment of any sum in deposit wit[illegible]

Recovery

31 The Commissioner may recover as an arrear of land [illegible] amount payable by any person [illegible] whether under an agreement for the [illegible] compensation or otherwise, and the Commissioner shall be de[illegible] public officer within the meaning of section 5 of the Reve[illegible] Act, 1890 ‡

CHAPTER IV

RULES

Power of the Governor General in Council to make rules

32 (1) The Governor Gen[illegible] may make rules to carry out the p[illegible] Act

* Inserted Act 15 of 1933. [illegible]

‡ I of 1890

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely —

(a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate ,

(b) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for medical examination under sub section (1) of section 11 ,

(c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases ,

(d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases ,

(e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another ;

(f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance

(g) for prescribing the form and manner in which memoranda of agreements sha[illegible]

(h) [illegible] whether in whole or in part, of half m[illegible]on applications for review of the same , and

(i) for any other matter which is not, in the opinion of the Governor General in Council, a matter of merely local or provincial importance

Power of Local Government to make rules

33 The Local Government may, subject to the control of the Governor General in Council, make rules to provide for all or any of the following matters namely —

(a) for regulating the scales of costs which may be allowed in proceedings under this Act ,

(b) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act ,

(c) for the maintenance by Commissioners of registers and records of proceedings before them , *

"†(d) for prescribing the classes of employers who shall maintain notice books under sub section (3) of section 10, and the form of such notice books ,

(e) for prescribing the form of statement to be substituted to by employers under section 10 A ,

(f) for prescribing the cases in which the report referred to in section 10B may be sent to an authority other than the Commissioner , and"

(g) generally for carrying out the provisions of this Act in respect of any matter which is in the opinion of the Local Government, a matter of merely local importance in the province

Publication of rules

34 (1) The power to make rules conferred by sections 32 and 33 shall be subject to the condition of the rules being made after previous publication

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 32 or section 33 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information

* Certain word after this repealed by Act 15 of 1933 has been omitted

† Inserted by Act 15 of 1933.

(3) Rules so made shall be published in the *Gazette of India*, or the local official Gazette, as the case may be, and on such publication, shall have effect as if enacted in this Act

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation

* '35 The Governor General in Council may, by notification in the *Gazette of India* make rules for the transfer of any part of His Majesty's Dominions or to any other country of money paid to a Commissioner under this Act, for the benefit of any person residing or about to reside in such part or country and for the receipt and administration in British India of any money awarded under the law relating to workman s compensation in any part of His Majesty's Dominions or in any other country and applicable for the benefit of any person residing or about to reside in British India "

SCHEDULE I

[*See sections 2 (1) and (4).*]

List of injuries deemed to result in permanent partial disablement.

Injury	Percentage of loss of earning capacity
Loss of right arm above or at the elbow	70
Loss of left arm above or at the elbow	60
Loss of right arm below the elbow	60
Loss of leg at or above the knee	60
Loss of left arm below the elbow	50
Loss of leg below the knee	50
Permanent total loss of hearing	50
Loss of one eye	30
Loss of thumb	25
Loss of all toes of one foot	20
Loss of one phalanx of thumb	10
Loss of one index finger	10
Loss of great toe	10
Loss of any finger other than index finger	5

Note—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member

SCHEDULE II

[SEE SECTION 2 (1) (n)]

List of persons who subject to the provisions of section 2 (1) (n), are included in the definition of workmen

The following persons are workmen within the meaning of section 2 (1) (n) and subject to the provisions of that section, that is to say, any person who is—

(i) employed otherwise than in a clerical capacity or on a Railway, in connection with the operation or maintenance of mechanically propelled vehicles, or

(ii) employed otherwise than in a clerical capacity, in any premises wherein, or within the precincts whereof on any one day of the preceding twelve months, ten or more persons have been employed in any manufacturing process as defined in

* Inserted by Act 15 of 1933.

clause (*k*) of section 2 of the Indian Factories Act, 1911 * or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used, or

(*iii*) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months, fifty or more persons have been so employed, or

(*iv*) employed, in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof, on any one day of the preceding twelve months ten or more persons have been so employed, or

(*v*) employed in any mine as defined in clause (*f*) of section 3 of the Indian Mines Act 1923†, in any mining operation, or in any kind of work other than clerical work incidental to or connected with any mining operation or with the mineral obtained or in any kind of work whatsoever below ground

Provided that any excavation in which on no day of the preceding twelve months more than fifty persons have been employed or explosives have been used and whose depth from its highest to its lowest point does not exceed twenty feet shall be deemed not to be a mine for the purpose of this clause, or

(*vi*) employed as the master or as a seaman of—

(*a*) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled, or

(*b*) any ship not included in sub clause (*a*) of fifty tons net tonnage or over, or

(*vii*) employed for the purpose of loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew or in the handling or transport within the limits of any port subject to the Indian Ports Act, 1908 ‡ of goods which have been discharged from or are to be loaded into any vessel, or

(*viii*) employed in the construction, repair or demolition of—

(*a*) any building which is designed to be or is or has been more than one storey in height above the ground or twenty feet or more from the ground level to the apex of the roof, or

(*b*) any dam or embankment which is twenty feet or more in height from its lowest to its highest point, or

(*c*) any road, bridge or tunnel, or

(*d*) any wharf, quay, sea wall, other marine work including any moorings of ships, or

(*ix*) employed in setting up, repairing, maintaining or taking down any telegraph or telephone line or post or any over head electric line or cable or post or standard for the same, or

(*x*) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial rope-way, canal, pipe-line, or sewer, or

(*xi*) employed in the service of any fire-brigade, or

(*xii*) employed upon a railway as defined in clause (4) of section 3 and sub-section (1) of section 148 of the Indian Railways Act 1890§ either directly or through a sub-contractor, by a person fulfilling a contract with the Railway administration, or

(*xiii*) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service, *or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department*, or

(*xiv*) employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas, or

(*xv*) employed in any occupation involving blasting operations, or

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* Act XII of 1911 † Act IV of 1923
‡ Act XV of 1908 § Act IX 1890

(*xvi*) employed in the making of any excavation in which on any one day of the preceding twelve months more than fifty persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twenty feet ; or

(*xvii*) employed in the operation of any ferry boat capable of carrying more than ten persons ; or

(*xviii*) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing cinchona, coffee rubber or tea, and on which on any one day in the preceding twelve months twenty five or more persons have been so employed ; or

(*xix*) employed, otherwise than in a clerical capacity, in the generating transforming or supplying of electrical energy or in the generating or supplying of gas , or

(*xx*) employed in a lighthouse as defined in clause (*d*) of section 2 of the Indian Lighthouse Act, 1927 * , or ,

(*xxi*) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures , or

(*xxii*) employed in the training, keeping or working of elephants or wild animals , or

(*xxiii*) employed as a diver

"Explanation I —In this Schedule, the preceding twelve months relate in any particular case to the twelve months ending with the day on which the accident in such case occurred" †

SCHEDULE III

(SEE SECTION 3)

List of occupational diseases

Occupational disease	Employment
Lead poisoning or its sequelae	Any process involving the use of lead or its preparations or compounds
Phosphorus poisoning or its sequelae	Any process involving the use of phosphorus or its preparations or compounds
"Mercury poisoning or its sequelae	Any process involving the use of mercury or its preparations or compounds
Poisoning by benzene and its homologues or the sequelae of such poisoning	Handling benzene or any of its homologues, and any process in the manufacture or involving the use of benzene or any of its homologues
Chrome ulcertion or its sequelae	Any process involving the use of chromic acid or bichrormate of ammonium, potasium or sodium, or other preparations
Compressed air illness or its sequelae	Any process carried on compressed air."‡

* Act XVII of 1927

† Substituted by Act XV of 1933

‡ Inserted by Act XV of 1933

*SCHEDULE IV.

SEE SECTION 4.

Compensation payable in certain cases

Monthly wages of the workman injured		Account of Compensation for—		Half monthly payment as compensation for Temporary Disablement of Adult.	
		Death of Adult.	Permanent Total Disablement of Adult.		
1		2	3	4	
More than	But not more than—			Half monthly wages	
Rs	Rs	Rs.	Rs.	Rs	As
0	10	500	700		
10	15	550	770	5	0
15	18	600	840	6	0
18	21	630	882	7	0
21	24	720	1,008	8	0
24	27	810	1,134	8	8
27	30	900	1,260	9	0
30	35	1,050	1,470	9	8
35	40	1,200	1,680	10	0
40	45	1,350	1,890	11	4
45	50	1,500	2,100	12	8
50	60	1,800	2,520	15	0
60	70	2,100	2,940	17	8
70	80	2,400	3,360	20	0
80	100	3,000	4,200	25	0
100	200	3,500	4,900	30	0
200	—	4,000	5,600	30	0

* Substituted by Act 15 of 1933.

THE UNITED PROVINCES COURT FEES (AMENDMENT) ACT, 1936

ACT NO II OF 1936

Received the assent of the Governor of the United Provinces of Agra and Oudh on March 21, 1936, and of the Governor General on April 2 1936 and was published under section 81 of the Government of India Act on April II 1936

AN ACT FURTHER TO AMEND THE COURT FEES ACT, 1870, IN ITS APPLICATION TO THE UNITED PROVINCES

Preamble

WHEREAS it is expedient further to amend the Court Fees Act, 1870 * in its application to the United Provinces ,

AND WHEREAS the previous sanction of the Governor General has been obtained under section 80 A, sub section (3) of the Government of India Act,† to the passing of this Act ,

It is hereby enacted as follows

Title, extent, commencement and duration

1 (1) This Act may be called the United Provinces Court Fees (Amendment) Act 1936

(2) It extends to the whole of the United Provinces

(3) It shall come into force on the first day of May 1936, and shall remain in force up to the thirtieth day of April 1939

Amendment of section 6 of Act VII of 1870

2 To section 6 of the Court Fees Act 1870 hereinafter referred to as 'the said Act,' the following provisos shall be added, namely

' Provided that where such document relates to any suit, appeal or other proceeding under the Oudh Rent Act, 1886 ‡ the Agra Tenancy Act 1926,§ or the United Provinces Land Revenue Act, 1901, ‖ the fee payable shall be three quarters of the fee indicated in either of the said schedules except where the first schedule anc proceeding to document as is mentioned in the foregoing proviso shall not be less than that indicated by either of the said schedules before the commencement of this Act ,

Amendment of paragraph (v) of section 7 of Act VII of 1870

3 In paragraph (v) of section 7 of the said Act for the word ten ' in clause (a) the word 'twenty shall be substituted and for the word "five in clause (b) the word "six shall be substituted

Amendment of paragraph (x) of section 7 of Act VII of 1870

4 For paragraph (ix) of section 7 of the said Act the following shall be substituted, namely

"(ix) In suits against a mortgagee for the recovery of the property mortgaged , according to the principal money expressed to be secured by the instrument of mortgage

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* VII of 1870

† 5 and 6 Geo V c 61 , 6 and 7 Geo V c 37 9 and 10 Geo V c 101

‡ Act XXII of 1886 § U P Act III of 1926 ‖ U P Act III of 1901

(ix) (a) In suits by a mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared absolute, according to the total amount claimed by way of principal and interest "

Amendment of section 18 of Act VII of 1870

5 In section 18 of the said Act for the words "eight annas" the words "twelve annas" shall be substituted

Amendment of Schedule I to Act VII of 1870

6. In Schedule I to the said Act the following amendments shall be made, namely —

(i) In article I for the entries in the second and third columns the entries shown in the first and second columns respectively of Schedule A to this Act shall be substituted

(ii) After article 2 the following shall be added as article 2A, namely —

"2 A—Application or written statement by a defendant in a suit for partition praying for partition of his share in the property sought to be partitioned	The same fee which would have been payable on a plaint if such defendant instituted a suit for partition"

(iii) In article 6 for the words "four", "eight" and "one rupee" in the third column, the words "six", "twelve" and "one rupee eight annas" respectively, shall be substituted

(iv) In article 7 for the words "eight" and "one rupee" in the third column, the words "twelve" and "one rupee eight annas," respectively, shall be substituted

(v) In article 8 for the word "eight" in the third column the word "twelve" shall be substituted

(vi) In article II for the entries above the proviso in the second column and the entries in the third column, the following shall be substituted .

"When the amount or value of the property in respect of which the grant of Probate or Letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees ;	Two per centum on such amount or value
When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees ,	Two and one half per centum on such amount or value
When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh of rupees ,	Three per centum on such amount or value
When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees ,	Four per centum on such amount or value"

(vii) In article 12 for the entries in the first and second columns and for the first paragraph in the third column, the following shall be substituted —

"12 Succession certificate under the Indian Succession Act, 1925	When the amount or value of the debt or security or the aggregate amount of the debts or securities specified in the certificate under section 374 of the Act does not exceed twenty thousand rupees ,	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act

When such amount or value exceeds twenty thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of twenty thousand rupees;	Two and a half per centum on such amount or value and three and a three quarters per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act
When such amount or value exceeds fifty thousand rupees but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees	Three per centum on such amount or value and four and a half centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act
When such amount or value exceeds a lakh of rupees for the portion of such amount or value which is in excess of a lakh of rupees	Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act'

(viii) For the table of *ad valorem* fees leviable on the institution of suits, the table shown in Schedule B to this Act shall be substituted

Amendment of Schedule II to Act VII of 1870

7 In Schedule II to the said Act the following amendments shall be made, namely :—

(1) In article 1 for the words "one anna," 'eight annas" and "one rupee' in the third column the words "two annas," "twelve annas" and "one rupee and eight annas," respectively, shall be substituted and the following shall be substituted for clause (*d*) in the second column and the entry against the same in the third column

"(*d*) When presented to the Board of Revenue for revision of a judgment or order	Three rupees
(*e*) When presented to a High Court	
(1) Under the Indian Companies Act 1913 (Act VII of 1913), for winding up a company	Fifty rupees
(2) Under section 115 of the Code of Civil Procedure, 1908 (Act V of 1908), for revision of an order	Four rupees
(3) In any other case ..	Three rupees"

(ii) In article 1 A for the words "twelve annas' in the third column the words "one rupee two annas" shall be substituted

(iii) In articles 5, 6 and 7 for the word "eight" in the third column the word "twelve" shall be substituted

(iv) In article 10 for the words "eight annas," "one rupee" and "two rupees" in the third column, the words "twelve annas," "one rupee eight annas" and "three rupees," respectively, shall be substituted.

(v) For article 11, the following shall be substituted

"11 Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented	(a) to any Civil Court other than a High Court or to any Revenue Court or Executive Officer other than a Commissioner of the division or Chief Controlling Revenue or Executive Authority,	Twelve annas
	(b) to a Commissioner of the division,	Two rupees
	(c) to a High Court or to a Chief Controlling Executive or Revenue Authority	Three rupees

(vi) The bracket opposite articles 12, 13 and 14 in the second column shall be omitted and for article 12 the following shall be substituted

'12 Caveat	Where the amount or value of the property in respect of which the caveat is lodged—	
	(a) does not exceed five thousand rupees,	Five rupees
	(b) exceeds five thousand rupees	Ten rupees"

(vii) For article 14 the following shall be substituted, namely

14 Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866		Seven rupees eight annas

(viii) In article 17 for the words 'Ten rupees' in the third column the words 'Fifteen rupees shall be substituted, and the following proviso shall be added •

'Provided that in a suit filed before a High Court under its original jurisdiction the fee chargeable under this article shall be one hundred rupees'

(ix) For article 18 the following shall be substituted, namely —

18 Application under paragraph 17 or paragraph 20 of the second Schedule of the Code of Civil Procedure, 1908		Fifteen rupees

(x) In article 19 for the word "ten" in the third column, the word 'fifteen shall be substituted

(xi) In articles 20 and 21 for the word 'twenty" in the third column the word 'thirty' shall be substituted

Saving

8 Nothing in this Act shall apply t ... nder the Unitec ... Act 1934, the ... ates Act 1934 the United Provinces Regu ... the United Provinces Regulation of Sales Ac ... be governed by the Court Fees Act, 1870,* as if it had not been amended by this Act

SCHEDULE A

When the amount or value of the subject matter in dispute does not exceed five rupees	Six annas
When such amount or value exceeds five rupees, for every five rupees, or part thereof in excess of five rupees, up to one hundred rupees	Six annas

* Act VII of 1870

When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to two hundred rupees	Twelve annas
When such amount or value exceeds two hundred rupees for every ten rupees, or part thereof, in excess of two hundred rupees, up to five hundred rupees	One rupee
When such amount or value exceeds five hundred rupees, for every ten rupees, or part thereof, in excess of five hundred rupees, up to one thousand rupees	One rupee four annas
When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees up to five thousand rupees	Six rupees four annas
When such amount or value exceeds five thousand rupees for every two hundred and fifty rupees or part thereof, in excess of five thousand rupees up to ten thousand rupees	Twelve rupees eight annas
When such amount or value exceeds ten thousand rupees for every five hundred rupees or part thereof, in excess of ten thousand rupees, up ro twenty thousand rupees	Eighteen rupees twelve annas
When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees up to thirty thousand rupees	Twenty five rupees
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof in excess of thirty thousand rupees up to fifty thousand rupees	Twenty five rupees
When such amount or value exceeds fifty thousand rupees for every five thousand rupees or part thereof in excess of fifty thousand rupees	Thirty one rupees four annas

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be four thousand five hundred rupees

SHEDULE B

Table of rates of ad valorem *fees leviable on the institution of suits—*

When the amount or value of the subject matter exceeds—	But does not exceed—	Proper fee		When the amount or value of the subject matter exceeds—	But does not exceeds—	Proper fee	
Rs	Rs	Rs	a	Rs	Rs	Rs	a
	5	0	6	60	65	4	14
5	10	0	12	65	70	5	4
10	15	1	2	70	75	5	10
15	20	1	8	75	80	6	0
20	25	1	14	80	85	6	6
25	30	2	4	85	90	6	12
30	35	2	10	90	95	7	2
35	40	3	0	95	100	7	8
40	45	3	6	100	110	8	4
45	50	3	12	110	120	9	0
50	55	4	2	120	130	9	12
55	60	4	8	130	140	10	8

When the amount or value of the subject matter exceeds—	But does not exceed—	Proper fee	When the amount or value of the subject matter exceeds—	But does not exceed—	Proper fee
Rs	Rs	Rs a	Rs	Rs	Rs a
140	150	11 4	680	690	68 12
150	160	12 0	690	700	70 0
160	170	12 12	700	710	71 4
170	180	13 8	710	720	72 8
180	190	14 4	720	730	73 12
190	200	15 0	730	740	75 0
200	210	16 0	740	750	76 4
210	220	17 0	750	760	77 8
220	230	18 0	760	770	78 12
230	240	19 0	770	780	80 0
240	250	20 0	780	790	81 4
250	260	21 0	790	800	82 8
260	270	22 0	800	810	83 12
270	280	23 0	810	820	85 0
280	290	24 0	820	830	86 4
290	300	25 0	830	840	87 8
300	310	26 0	840	850	88 12
310	320	27 0	850	860	90 0
320	330	28 0	860	870	91 4
330	340	29 0	870	880	92 8
340	350	30 0	880	890	93 12
350	360	31 0	890	900	95 0
360	370	32 0	900	910	96 4
370	380	33 0	910	920	97 8
380	390	34 0	920	930	98 12
390	400	35 0	930	940	100 0
400	410	36 0	940	950	101 4
410	420	37 0	950	960	102 8
420	430	38 0	960	970	103 12
430	440	39 0	970	980	105 0
440	450	40 0	980	990	106 4
450	460	41 0	990	1 000	107 8
460	470	42 0	1,000	1,100	113 12
470	480	43 0	1,100	1,200	120 0
480	490	44 0	1,200	1,300	126 4
490	500	45 0	1 300	1,400	132 8
500	510	46 4	1 400	1,500	138 12
510	520	47 8	1,500	1 600	145 0
520	530	48 12	1,600	1,700	151 4
530	540	50 0	1 700	1 800	157 8
540	550	51 4	1 800	1,900	163 12
550	560	52 8	1 900	2 000	170 0
560	570	53 12	2 000	2 100	176 4
570	580	55 0	2,100	2,200	182 8
580	590	56 4	2,200	2,300	188 12
590	600	57 8	2,300	2,400	195 0
600	610	58 12	2 400	2 500	201 4
610	620	60 0	2,500	2 600	207 8
620	630	61 4	2 600	2,700	213 12
630	640	62 8	2 700	2,800	220 0
640	650	63 12	2,800	2,900	226 4
650	660	65 0	2,900	3 000	232 8
660	670	66 4	3 000	3 100	238 12
670	680	67 8	3 100	3,200	245 0

When the amount or value of the subject matter exceeds—	But does not exceed—	Proper fee		When the amount or value of the subject matter exceeds—	But does not exceed—	Proper fee	
Rs	Rs	Rs	a	Rs	Rs	Rs	a
3 200	3 300	251	4	13 000	13 500	738	12
3 300	3 400	257	8	13 500	14 000	757	8
3 400	3 500	263	12	14 000	14 500	776	4
3 500	3 600	270	0	14 500	15 000	795	0
3 600	3 700	76	4	15 000	15 500	813	12
3 700	3 800	282	8	15 500	16 000	832	8
3 800	3 900	288	12	16 000	16 500	851	4
3 900	4 000	295	0	16 500	17 000	870	0
4 000	4 100	301	4	17 000	17 500	888	12
4 100	4 200	307	8	17 500	18 000	907	8
4 200	4 300	313	12	18 000	18 500	926	4
4 300	4 400	320	0	18 500	19 000	945	0
4 400	4 500	326	4	19 000	19 500	963	12
4 500	4 600	332	8	19 500	20 000	982	8
4 600	4 700	338	12	20 000	21 000	1 007	8
4 700	4 800	345	0	21 000	22 000	1 03	8
4 800	4 900	351	4	22 000	23 000	1 057	8
4 900	5 000	357	8	23 000	24 000	1 082	8
5 000	5 250	370	0	24 000	25 000	1 107	8
5 250	5 500	382	8	25 000	26 000	1 132	8
5 500	5 750	395	0	26 000	27 000	1 157	8
5 750	6 000	407	8	27 000	28 000	1 182	8
6 000	6 250	420	0	28 000	20 000	1 207	8
6 250	6 500	432	8	29 000	30 000	1 232	8
6 500	6 750	445	0	30 000	32 000	1 257	8
6 750	7 000	457	8	32 000	34 000	1 282	8
7 000	7 250	470	0	34 000	36 000	1 307	8
7 250	7 500	482	8	36 000	38 000	1 332	8
7 500	7 750	495	0	38 000	40 000	1 357	8
7 750	8 000	507	8	40 000	42 000	1 382	8
8 000	8 250	520	0	42 000	44 000	1 407	8
8 250	8 500	53	8	44 000	46 000	1 437	8
8 500	8 750	545	0	46 000	48 000	1 457	8
8 750	9 000	557	8	48 000	50 000	1 482	8
9 000	9 250	570	0	50 000	55 000	1 513	12
9 250	9 500	582	8	55 000	60 000	1 545	0
9 500	9 750	595	0	60 000	65 000	1 576	4
9 750	10,000	607	8	65 000	70 000	1 607	8
10 000	10 500	626	4	70 000	75 000	1 638	12
10 500	11 000	645	0	75 000	80 000	1 670	0
11 000	11 500	663	12	80 000	85 000	1 701	4
11 500	1 000	682	8	85 000	90 000	1 732	8
12 000	12 500	701	4	90 000	95 000	1 763	12
12 500	13 000	720	0	95 000	1 00 000	1 795	0

And the fee increases at the rate of thirty one rupees four annas for every five thousand rupees or part thereof for example—

Rs	Rs	a
2 00 000	2 4 0	0
3 00 000	3 045	0
4 00 000	3 670	0
5 00 000	4 795	0
5 35 000	4 500	0

THE UNITED PROVINCES STAMP (AMENDMENT) ACT, 1936.

ACT NO. III OF 1936

Received the assent of the Governor of the United Provinces of Agra and Oudh on March 21, 1936 and of the Governor General on April 1, 1936, and was published under section 81 of the Government of India Act, 1919, on April 11, 1936

An Act to amend the Indian Stamp Act, 1899, in its application to the United Provinces

Preamble

WHEREAS it is expedient to amend the Indian Stamp Act, 1899,* in its application to the United Provinces in the manner hereinafter appearing,

AND WHEREAS the previous sanction of the Governor General has been obtained, under section 80 A, sub section (3), of the Government of India Act,† to the passing of this Act,

It is hereby enacted as follows

Short title extent commencement and duration

1. (1) This Act may be called the United Provinces Stamp (Amendment) Act, 1936

(2) It extends to the whole of the United Provinces

(3) It shall come into force on the first day of May, 1936, and remain so till the thirtieth day of April, 1939

Amendment of clause (10) of section 2 of Act II of 1899

2 To clause (10) of section 2 of the Indian Stamp Act, 1899, hereinafter referred to as the "said Act the following shall be added, namely —

or by Schedule IA, as the case may be "

Amendment of section 3

3 In section 3 of the said Act—

(1) after clause (c) the following shall be inserted, namely,—

"Provided that except as otherwise expressly provided in this Act, and notwithstanding any thing contained in clauses (a), (b) and (c) of this section or in Schedule I, the following instruments shall, subject to the exemptions contained in Schedule IA, be chargeable with duty of the amount indicated in Schedule IA as the proper duty therefor respectively, that is to say

(aa) every instrument mentioned in Schedule IA which, not having been previously executed by any person, is executed in the United Provinces on or after the first day of May, 1936, and

(bb) every instrument mentioned in Schedule IA which, not having been previously executed by any person is executed out of the United Provinces on or after the first day of May, 1936, and relates to any property situated, or to any matter or thing done or to be done in the United Provinces, and is received in the United Provinces"

(2) after the word "Provided" the word "also" shall be inserted.

Amendment of section 4(1)

4 In sub-section (1) of section 4 of the said Act—

* II of 1899

† 5 and 6, Geo V c 61, 6 and 7, Geo V c 37, 9 and 10, Geo V, c 101

for the word and figure "Schedule I the word and figure "Schedule IA,' and for the words "one rupee the words 'one rupee eight annas' shall be substituted

Amendment of section 6

5 In section 6 of the said Act—

(1) in the first paragraph after the words and figure "in Schedule I' the following shall be inserted namely —

"or Schedule IA'

(2) in the proviso, after the words 'one rupee the words 'and eight annas' shall be inserted, and after the words 'has been paid the following shall be added, namely —

'unless it falls within the provisions of section 6A '

Addition of a new section 6 A

6 After section 6 of the said Act the following shall be inserted as a new section

Payment of the United Provinces stamp duty on copies, counterparts or duplicates when that duty has not been paid on the principal or original instrument

'6 A (1) Notwithstanding anything contained in section 4 or 6 or in any other law, unless it is proved that the duty chargeable under the United Provinces Stamp (Amendment) Act 1936 has been paid—

(a) on the principal or original instrument as the case may be or

(b) in accordance with the provisions of this section the duty chargeable on any one of the several instruments employed for completing a transaction of sale, mortgage or settlement other than the principal instrument or on a counterpart duplicate or copy or any instrument shall if the principal or original instrument would when received in the United Provinces have (Amendment) Act 1936 the principal or original 19 A

(2) Notwithstanding anything contained in any law no instrument counterpart duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon

Provided that a Court before which any such instrument counterpart duplicate or copy is produced, may in its discretion permit the duty chargeable under this section to be paid thereon and may then receive it in evidence

Addition of a new section 19-A

7 After section 19 of the said Act the following shall be inserted as a new section

Payment of duty on certain instruments liable to increased duty in the United Provinces under clause (bb) of section 3

'19 A Where any instrument has become chargeable in any part of British India other than the United Provinces with duty under this Act or under any other law for the time being in force in any part of British India and thereafter becomes chargeable with a higher rate of duty in the United Provinces under clause (*bb*) of the first proviso to section 3, then—

(i) notwithstanding anything contained in the first proviso to section 3 the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule I A less the amount of duty if any, already paid on it in British India, and

(ii) in addition to the stamps if any already affixed thereto such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same

time and by the same persons as though such instrument were an instrument received in British India for the first time at the time when it become chargeable with the higher duty

Amendment of section 23 A

8 In section 23 A of the said Act for the word and figure 'Schedule I' the word and figure 'Schedule I A shall be substituted

Amendment of section 32

9 In section 32 of the said Act—

(1) in cause (*a*) of the proviso after the words "any instrument the words other than an instrumentchargeable with a duty under clause (*bb*)" of the first proviso to section 3' shall be inserted,

(2) the word "or at the end of clause (*b*) of the proviso shall be omitted,

(3) after clause (*c*) of the proviso the word "or shall be inserted and the following new clause shall be added, namely,—

'(*d*) any instrument chargeable with duty under clause (*bb*) of the first proviso to section 3 and brought to him after the expiration of three months from the date on which it is first received in the United Provinces

Addition of a new section 48 A

10 After section 48 of the said Act the following shall be inserted as a new section

Validity of certificate or endorsement in respect of instruments for which higher rate of duty is payable in the United Provinces

48 A Notwithstanding anything contained in this Act no certificate or endorsement under this Act in respect of an instrument chargeable in the United Provinces with a higher rate of duty under the United Provinces Stamp (Amendment) Act 1936, shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument unless the duty chargeable at the rates provided in the United Provinces Stamp (Amendment) Act, 1936 has been paid on such instrument'

Amendment of section 77

11 At the beginning of section 77 of the said Act the following shall be inserted namely,—

'Except the provision as to copies contained in section 6 A

New Schedule I A

13 After Schedule I to the said Act the following shall be inserted, namely,—

SCHEDULE I A

Stamp duty on certain instruments under the United Provinces Stamp (Amendment) Act, 1936

(*See* section 3 first proviso)

(Note—The articles in Schedule I A are numbered so as to correspond with similar articles in Schedule I)

Description of Instrument	Proper stamp duty
* * * *	
2 ADMINISTRATION BOND, including a bond given under sections 291, 375 and 376 of the Indian Succession Act, 1925 * or section 6 of the Government Savings Banks Act † 1873—	

* XXXIX of 1925 † V of 1873

Description of instrument	Proper stamp duty
(*a*) where the amount does not exceed Rs 1,000	The same duty as a Bond (no. 15) for such amount
(*b*) in any other case	Ten rupees
* * * *	
ADVOCATE *See* entry as an Advocate (no 30)	
4 AFFIDAVIT, including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing	Two rupees
Exemptions	
Affidavit or declaration in writing when made— (*a*) as a condition of enrolment under the Indian Army Act 1911 * (*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court, or (*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance	
5 AGREEMENT OR MEMORANDUM OF AN AGREEMENT—	
(*a*) if relating to the sale of a bill of exchange	Three annas
(*b*) if relating to the sale of a Government security or share in an incorporated company or other body corporate	Subject to a maximum of fifteen rupees, one and half annas for every Rs 10,000 or part thereof of the value of the security or share
(*c*) if not otherwise provided for ...	Twelve annas
Exemptions	
Agreement or Memorandum of Agreement— (*a*) for or relating to the sale of goods or merchandise exclusively, not being a Note or [illegible] Gov [illegible] Act, 1874 † section 17	
AGREEMENT TO LEASE *See* Lease (no 35)	
6 AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE, that is to say, any instrument evidencing an agreement relating to— (1) the deposit of title deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security); or	

* VIII of 1911. † X of 1874

(2) the pawn or pledge of movable property, where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—

(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement—

			Rs.	Rs. a p
when the amount of the loan or debt does not exceed ...		...	200	0 3 0
	Rs			
when it exceeds	200	but does not exceed	400	0 8 0
ditto	400	ditto	600	0 12 0
ditto	600	ditto	800	1 0 0
ditto	800	ditto	1,000	1 4 0
ditto	1,000	ditto	1,200	1 8 0
ditto	1,200	ditto	1,600	2 0 0
ditto	1,600	ditto	2,500	3 0 0
ditto	2,500	ditto	5,000	6 0 0
ditto	5,000	ditto	7,500	9 0 0
ditto	7,500	ditto	10,000	12 0 0
ditto	10,000	ditto	15,000	18 0 0
ditto	15,000	ditto	20,000	24 0 0
ditto	20,000	ditto	25,000	30 0 0
ditto	25,000	ditto	30,000	36 0 0
and for every additional Rs 10,000 or part thereof in excess of Rs 30,000 ;				12 0 0

(b) if such loan or debt is repayable not more than three months from the date of such instrument — Half the duty payable on a loan or debt under clause (a) for the amount secured

Exemption

Instruments of pawn or pledge of agricultural produce if unattested

7 APPOINTMENT IN EXECUTION OF A POWER, whether of trustees or of property, movable or immovable, where made by any writing not being a Will—

(a) where the value of the property does not exceed Rs 1,000 , — Fifteen rupees

(b) in any other case ... ... — Twenty five rupees

8. APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—

(a) where the amount does not exceed Rs 1 000 ; — The same duty as a Bond (no 15) for such amount

(b) in any other case ... ... — Seven rupees eight annas.

Exemptions.

(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatoryb etween parties either by agreement or operation of law.

(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

Description of instrument	Proper stamp duty
9 APPRENTICESHIP DEED, including every writing relating to the service or tuition of any apprentice, clerk or servant placed with any master to learn any profession, trade or employment, not being Articles of Clerkship (no 11)	Seven rupees eight annas
Exemption	
Instruments of apprenticeship executed by a Magistrate under the Apprentices Act 1850,* or by which a person is apprenticed by or at the charge of any public charity	
10 ARTICLES OF ASSOCIATION OF A COMPANY	Fifty rupees
Exemption	
Articles of any Association not formed for profit and registered under section 26 of the Indian Companies Act, 1913 †	
See also Memorandum of Association of a Company (no 39)	
* * *	
ASSIGNMENT *See* Conveyance (no 23) Transfer (no 62) and Transfer of Lease (no 63), as the case may be	
ATTORNEY *See* entry as an Attorney (no 30), and Power of Attorney (no 48)	
AUTHORITY TO ADOPT *See* adoption deed (no 3)	
12 AWARD that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	
(*a*) Where the amount or value of the property to which the award relates does not exceed Rs 1,000,	The same duty as a Bond (no 15) for such amount
(*b*) if it exceeds Rs 1 000 but does not exceed Rs 5 000	Seven rupees eight annas
(*c*) in any other case	Ten rupees
Exemption	
Award under the Bombay District Municipal Act 1901 ‡ section 160, or the Bombay Hereditary Offices Act, 1874 § section 18 or the United Provinces Municipalities Act, 1916 ‖ section 324(1) or the United Provinces District Boards Act,** 1922 section 190(1)	
* *	
14 BILL OF LADING (including a through bill of lading)	Six annas *N B*—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set

* XIX of 1850 † VII of 1913 ‡ Bom Act III of 1901
§ Bom Act III of 1874 ‖ U P Act II of 1916 ** U P Act X of 1922

Description of instrument	Proper stamp duty
Exemptions	
(a) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1908 * and are to be delivered at another place ... tish ... in	
15 BOND [as defined by sect on 2(5)] not being a DEBENTURE (no 27) and not being other wise provided for by this Act, or by the Court Fees Act, 1870†—	
where the amount or value secured does not exceed Rs 10	Two annas
where it exceeds Rs 10 but does not exceed 50	Four annas
ditto 50 ditto 100	Eight annas
ditto 100 ditto 200	One rupee
ditto 200 ditto 300	One rupee eight annas
ditto 300 ditto 400	Two rupees
ditto 400 ditto 500	Two rupees eight annas
ditto 500 ditto 600	Three rupees four annas
ditto 600 ditto 700	Four rupees
ditto 700 ditto 800	Four rupees twelve annas
ditto 800 ditto 900	Five rupees eight annas
ditto 900 ditto 1,000	Six rupees four annas
and for every Rs 500 or part thereof in excess of 1,000	Three rupees twelve annas
See Administration Bond (no ?) Bottomry Bond (no 16) Customs Bond (no 26) Indemnity Bond (no 34) Respondentia Bond (no 56) Security Bond (no 57)	
Exemptions	
Bond when executed by— (a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act 1876 ‡ section 99 for the due performance of their duties under that , (b) any person for the purpose of guaranteeing ... bs ... or ... es	
16 BOTTOMRY BOND that is to say, any instrument whereby the master of a seagoing ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage	The same duty as a Bond (no 15) for a sum equal to the amount or value secured
	Seven rupees eight annas

* XV of 1908 † VII of 1870

‡ Ben Act III of 1876

Description of instrument	Proper stamp duty
See also Release (no 55) Revocation of Settlement (no 58 B) Surrender of lease (no 61) Revocation of Trust (no 64 B)	
18 CERTIFICATE OF SALE (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer—	
(*a*) where the purchase money does not exceed Rs 10,	Two annas
(*b*) where the purchase money exceeds Rs 10 but does not exceed Rs 25,	Four annas
(*c*) in any other case	The same duty as a Conveyance (no 23) for a consideration equal to the amount of the purchase money only
* * * * *	
(20) CHARTER PARTY, that is to say, any instrument (except an agreement for the hire of a tug steamer), whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer, whether it includes a penalty clause or not	Two rupees
* * *	
	Twelve rupees eight annas
debts is secured to the creditors or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors or under letters of license for the the benefit of his creditors	
23 CONVEYANCE [as defined by section 2(10)] not being a transfer charged or exempted under no 62—	
Where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs 50	Eight annas

	Rs		Rs	
where it exceeds	50	but does not exceed	100	One rupee
ditto	100	ditto	200	Two rupee
ditto	200	ditto	300	Three rupees
ditto	300	ditto	400	Four rupees
ditto	400	ditto	500	Five rupees
ditto	500	ditto	600	Six rupees eight annas
ditto	600	ditto	700	Eight rupees
ditto	700	ditto	800	Nine rupees eight annas
ditto	800	ditto	900	Eleven rupees
ditto	800	ditto	1,000	Twelve rupees eight annas
and for every Rs 500 or part thereof in excess of Rs 1,000				Seven rupees eight annas

Exemption

Assignment of Copyright under the Indian Copyright Act, 1914, section 5

Description of instrument	Proper stamp duty
CO PARTNERSHIP DEED *See* Partnership (no 46)	
24 COPY OR EXTRACT, certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court fees—	
(i) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee ;	Eight annas when the copy or extract is of an agricultural lease or of a mortgage deed or sale deed of agricultural land in any other case twelve annas
(ii) in any other case not falling within the provisions of section 6A	One rupee when the copy or extract is of an agricultural lease or of a mortgage deed or sale deed of agricultural land, in any other case one rupee eight annas
Exemptions	
(*a*) Copy of any paper which a public officer is expressly required by law to make or furnish, for record in any public office or for any public purpose	
(*b*) Copy of, or extract from, any register relating to births baptisms, namings dedications, marriages, divorces deaths or burials	
25 COUNTERPART OR DUPLICATE of any instrument chargeable with duty and in respect of which the proper duty has been paid—	
(*a*) if the duty with which the original instrument is chargeable does not exceed one rupee eight annas ,	The same duty as is payable on the original
(b) in any other case not falling within the provisions of section 6A	One rupee eight annas
Exemption	
Counterpart of any lease granted to a cultivator when such lease is exempted from duty	
26 CUSTOMS BOND—	
(*a*) where the amount does not exceed Rs 1000	The same duty as a Bond (no 15) for such amount
(*b*) in any other case	Ten rupees
27 DEBENTURE (whether a mortgage debenture or not), being a marketable security transferable—	
(*a*) by endorsement or by a separate instrument of transfer ,	The same duty as a *Bond* (no 15) for the same amount.
(*b*) by delivery—	
where the face amount of the debenture does not exceed Rs 100 ;	One rupee four annas
where it exceeds Rs 100 but does not exceed Rs. 200 ,	Two rupees eight annas

* III of 1914

Description of instrument	Proper stamp duty
where it exceeds Rs 200 *Explanation*—The term Debenture includes any interest coupons attached thereto but the amount of such coupons shall not be included in estimating the duty	The same duty as a Conveyance (no 23) for a consideration equal to the face amount of the debenture
Exemption A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage deed duly stamped in respect of the full amount of debentures to be issued thereunder whereby the company or body borrowing makes over in whole or in part their property to trustees for the benefit of the debenture holders, provided that the debentures so issued are expressed to be issued in terms of the said mortgage deed	
See also Bond (no 15) and sections 8 and 55	
DECLARATION OF ANY TRUST (*See* Trust no 64)	
* * * *	
DEPOSIT OF TITLE DEEDS *See* Agreement relating to deposit of title deeds pawn or pledge (no 6)	
DISSOLUTION OF PARTNERSHIP *See* Partnership (no 46)	
29 DIVORCE—Instrument of—that is to say any instrument by which any person effects the dissolution of his marriage	Five rupees
DOWER—Instrument of—See Settlement (no 58)	
DUPLICATE—*See* Counterpart (no 25)	
30 ENTRY AS AN ADVOCATE VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT under the Indian Bar Councils Act 1926 or in exercise of powers conferred on such Court by Letters Patent or by the Legal Practitioners Act,* 1879—	
(*a*) in the case of an Advocate or Vakil	Five hundred rupees
(b) in the case of any Attorney	Five hundred rupees
Exemption Entry of an Advocate Vakil or Attorney on the roll of any High Court when he has previously been enrolled in a High Court	
31 EXCHANGE OF PROPERTY—Instrument of—	The same duty as a Conveyance (no 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument
EXTRACT *See* COPY (no 24)	
32 FURTHER CHARGE—Instrument of that is to say any instrument imposing a further charge on mortgaged property—	

* XVIII of 1879

Description of instrument	Proper stamp duty
(a) When the original mortgage is one of the description referred to in clause (a) of article no 40 (that is with possession),	The same duty as a Conveyance (no 23) for a consideration equal to the amount of the further charge secured by such instrument
(b) When such mortgage is one of the description referred to in clause (b) of article no 40 (that is without possession)—	
(i) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument,	The same duty as a Conveyance (no 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge
(ii) if possession is not so given	The same duty as a Bond (no 15) for the amount of the further charge secured by such instrument
33 GIFT—Instrument of not being a settlement (no 58) or Will or Transfer (no 62)	The same duty as a Conveyance (no 23) for a consideration equal to the value of the property
HIRING AGREEMENT or agreement for service *See* Agreement (no 5)	
34 INDEMNITY BOND .	The same duty as a Security Bond (no 57) for the same amount
INSPECTORSHIP DEED *See* Composition deed (no 22)	
35 LEASE, including an under lease or sub lease and any agreement to let or sublet—	
(a) where by such lease the rent is fixed and no premium is paid or delivered—	
(i) where the lease purports to be for a term of less than one year,	The same duty as a Bond (no 15) for the whole amount payable or deliverable under such lease
(ii) where the lease purports to be for a term of not less than one year but not more than three years,	The same duty as a Bond (no 15) for the amount or value of the average annual rent reserved
(iii) where the lease purports to be for a term exceeding three years, but not exceeding ten years,	The same duty as a Conveyance (no 23) for a consideration equal to the amount or value of the average annual rent reserved
(iv) where the lease purports to be for a term exceeding ten years, but not exceeding twenty years,	The same duty as a Conveyance (no 23) for a consideration equal to twice the amount or value of the average annual rent reserved
(v) where the lease purports to be for a term exceeding twenty years, but not exceeding thirty years,	The same duty as a Conveyance (no 23) for a consideration equal to three times the amount or value of the average annual rent reserved

Description of instrument	Proper stamp duty
(vi) where the lease purports to be for a term exceeding thirty years, but not exceeding one hundred years ;	The same duty as a Conveyance (no 23) for a consideration equal to *four times* the amount or value of the average annual rent reserved
(vii) where the lease purports to be for a term exceeding one hundred years or in perpetuity ;	The same duty as a Conveyance (no 23) for a consideration equal to one fifth of the whole amount of rent which would be paid or delivered in respect of the first fifty years of the lease
(viii) where the lease does not purport to be for any definite term ;	The same duty as a Conveyance (no 23) for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long
(*b*) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved ;	The same duty as a Conveyance (no 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease
(*c*) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved	The same duty as a Conveyance (no 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered Provided that in any case when an agreement to lease is stamped with the *ad valorem* stamp required for lease, and a lease in pursuance of such agreement is subsequently executed the duty on such lease shall not exceed twelve annas

Exemptions

(*a*) Lease executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink), without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average *annual rent reserved does not exceed one* hundred rupees

In this exemption a lease for the purposes of cultivation shall include a lease of land for cultivation together with a homestead or tanks

Description of instrument	Proper stamp duty
(*b*) Leases of fisheries granted under the Burma Fisheries Act, 1905, or the Upper Burma Land and Revenue Regulation, 1889 * *Explanation*—When a lease undertakes to pay any recurring charge, such as Government revenue the landlord s share of cesses or the owner s share of municipal rates or taxes, which is by law recoverable from the lessor the amount so agreed to be paid by the lessee shall be deemed to be part of the rent	
* * * *	
LETTER OF GUARANTEE *See* Ageement (no 5)	
38 LETTER OF LICENCE, that is to say, any agreement between a debtor and his creditors that the latter shall for a specified time suspend their claims and allow the debtor to carry on business at his own discretion	Twelve rupees eight annas
39 MEMORANDUM OF ASSOCIATION OF A COMPANY—	
(*a*) if accompanied by Articles of Association under section 17 of the Indian Companies Act 1913†	Thirty rupees
(*b*) If not so accompanied	Eighty rupees
Exemption	
Memorandum of any Association not formed for profit and registered under section 26 of the Indian Comp[illegible] *	
* * t	
[illegible] Mortgage of a crop (no 41) Respondentia Bond (no 56) or Security Bond (no 57)—	
(*a*) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given	The same duty as a Conveyance (no 23) for a consideration equal to the amount secured by such deed
(*b*) when pessession is not given or agreed to be given as aforesaid ,	The same duty as a Bond (no 15) for the amount secured by such deed
Explanation—A mortgagor who gives to the mortgagee a power of attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article	
(*c*) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped—	
for every sum secured not exceeding Rs 1,000 ,	Twelve annas
and for every Rs 1 000 or part thereof secured in excess of Rs 1 000	Twelve annas

* Bur Act III of 1905, III of 1889
† VII of 1913

Description of instrument	Proper stamp duty
Exemptions (1) Instruments executed by persons taking advances under the Land Improvement Loans Act, 1883,* or the Agriculturists Loans Act, 1884,† or by their sureties as security for the repayment of such advances (2) Letter of hypothecation accompanying a bill of exchange *　　*　　*　　*	
42 NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a PROTEST (no 50) made or signed by a Notary Public in the execution of the duties of his office or by any other person lawfully acting as a Notary Public *See* also Protest of Bill or Note (no 50)	Two rupees
43 NOTE OR MEMORANDUM sent by a broker or agent to his principal intimating the purchase or sale on account of such principal—	
(*a*) of any goods exceeding in value twenty rupees	Three annas
(*b*) of any stock or marketable security exceeding in value twenty rupees	Subject to a maximum of fifteen rupees two annas for every Rs 10,000) or part thereof of the value of the stock or security
44 NOTE OF PROTEST by the Master of a ship *See* also Protest by the Master of a ship (no 51) *　　*　　*　　*　　*	One rupee
45 PARTITION—Instrument of—[as defined by section 2(15)]	The same duty as a Bond (no 15) for the amount of the value of the separated share or shares of the property N B —The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares) then one of such equal shares shall be deemed to be that from which the other shares are separated Provided always that— (*a*) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than twelve annas;

* XIX of 1883.　　† XII of 1884

Description of instrument	Proper stamp duty
	(b) where land is held on Revenue Settlement for a period not exceeding forty years and paying the full assessment the value for the purpose of duty shall be calculated at five times the annual revenue ; (c) where a final order for effecting a partition passed by any Revenue Authority or any Civil Court or an award by an arbitrator directing a partition is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed twelve annas
46 PARTNERSHIP—	
A —Instrument of—	
(a) where the capital of the patnership does not exceed Rs 500 ;	Three rupees twelve annas
(b) where the capital exceeds Rs 500 but does not exceed Rs 2,000	Seven rupees eight annas
(c) in any other case	Fifteen rupees
B —Dissolution of—	Ten rupees
PAWN OR PLEDGE *See* Agreement relating to deposit of Title deeds, Pawn or Pledge (no 6)	
* * * * *	
48 POWER OF ATTORNEY as defined by section 2 (21) not being a proxy (no 52)—	
(a) when executed for the sole purpose of pro curing the re- [illegible]	Twelve annas
[illegible]	Twelve annas
[illegible] Cause Courts Act, 1882 ;	
(c) when a[illegible]	One rupee eight annas
[illegible]	Seven rupees eight annas
[illegible] section or generally ;	
(e) when authorizing more than five but not more than ten person[illegible]	Fifteen rupees
[illegible]	The same duty as a conveyance (no 23) for the amount of the consideration
(g) in any other case	One rupee eight annas for each person authorized N. B —The term registration includes every operation in-

Description of instrument	Proper stamp duty
	cidental to registration under, the Indian Registration Act 1877
Explanation—For the purposes of this Article more persons than one when belonging to the same firm shall be deemed to be one person	
50 PROTEST OF BILL OR NOTE, that is to say any declaration in writing made by a Notary Public, or other person lawfully acting as such attesting the dishonour of a Bill of Exchange or Promissory Note	Two rupees
51 PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such	Two rupees
See also note of Protest by the Master of a ship (no 44)	
* * *	
54 RECONVEYANCE OF MORTGAGED PROPERTY—	
(*a*) if the consideration for which the property was mortgaged does not exceed Rs 1,000,	The same duty as a Conveyance no 23 for the amount of such consideration as set forth in the reconveyance
(*b*) in any other case	Fifteen rupees
55 RELEASE, that is to say, any instrument (not being such a release as is provided for by section 23 A) whereby a person renounces a claim upon another person or against any specified property—	
(*a*) if the amount or value of the claim does not exceed Rs 1000,	The same duty as a Bond (no 15) for such amount or value as set forth in the release
(*b*) in any other case	Seven rupees eight annas
56 RESPONDENTIA BOND, that is to say any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination	The same duty as a Bond (no 15) for the amount of the loan secured
REVOCATION OF ANY TRUST OR SETTLEMENT *See* Settlement (no 58), Trust (no 64)	
57 SECURITY BOND OR MORTGAGE DEED executed by way of security for the due execution of an office or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract —	
(*a*) when the amount secured does not exceed Rs 1,000	The same duty as a Bond (no 15) for the amount secured
(*b*) in any other case	Seven rupees eight annas

Description of instrument	Proper stamp duty
Exemptions	
Bond or other instrument, when executed—	
(a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act 1876,* section 99, for the due performance of their duties under that Act,	
(b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital, or any other object of public utility, shall be not less than a specified sum per mensem,	
(c) under no 3A of the rules made by the Governor of Bombay in Council under section 70 of the Bombay Irrigation Act, 1879,†	
(d) executed by persons taking advances under the Land Improvement Loans Act, 1883,‡ or the Agriculturists Loans Act, 1884 § or by their sureties, as security for the repayment of such advances,	
(e) executed by officers of Government or their sureties to secure the due execution of an office, or the due accounting for money or other property received by virtue thereof	
58 SETTLEMENT	
A —Instrument of (including a deed of dower)—	The same duty as a Bond (no 15) for a sum equal to the amount or value of the property settled Provided that where an agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed twelve annas
Exemptions	
(a) Deed of dower executed on the occasion of a marriage between Muhammadans	
(b) Hludassa, that is to say, any settlement of immovable property executed by a Buddhist in Burma for a religious purpose in which no value has been specified and on which a duty of Rs 10 has been paid	
B —Revocation of—	The same duty as a Bond (no 15) for a sum equal to the amount or value of the property concerned, but not exceeding fifteen rupees
See also Trust (no 64)	
59 SHARE WARRANTS to bearer issued under the Indian Companies Act, 1913 ‖	The same duty as a Debenture transferable by delivery [no 27(b)] for a face amount equal

* Ben Act III of 1876
† Bom Act VII of 1879
‡ XIX of 1883
§ XII of 1884
‖ VII of 1913

Description of Instrument	Proper stamp duty
	to the nominal amount of th shares specified in the warrant
Exemptions	
Share warrant when issued by a company in pursuance of the Indian Companies Act 1913* section 43 to have effect only upon payment, as composition for that duty, to the Collector of Stamp—Revenue of—	
(a) one and a half per centum of the whole ... pa d the said ...uently issues ...—one and a half per centum of the additional capital so issued	
* * * *	
61 SURRENDER OF LEASE—	
(a) when the duty with which the lease is chargeable does not exceed seven rupees eight annas	The duty with which such lease is chargeable
(b) in any other case	Seven rupees eight annas
Exemption	
Sorrender of lease when such lease is exempted from duty	
62 TRANSFER (whether with or without consideration)—	
(a) of shares in an incorporated Company or other body corporate	
(b) of debentures being marketable securities whether the debenture is liable to duty or not, except debentures provided for by section 8	
When the value of the share or the face amount of the debenture does not exceed Rs 100	Twelve annas

	Rs		Rs	
where it exceeds	100 but	does not exceed	200	One rupee eight annas
ditto	200	ditto	300	Two rupees four annas
ditto	300	ditto	400	Three rupees
ditto	400	ditto	500	Three rupees twelve annas,
ditto	500	ditto	600	Four rupees eight annas
ditto	600	ditto	700	Five rupees four annas
ditto	700	ditto	800	Six rupees
ditto	800	ditto	900	Six rupees twelve annas
ditto	900	ditto	1 000	Seven rupees eight annas

* VII of 1913

Description of instrument	Proper stamp duty
and for every Rs 500 or part thereof in excess of Rs 1000	Three rupees twelve annas
(c) of any interest secured by a bond, mortgage deed or policy of insurance—	
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees,	The duty with which such bond mortgage-deed or policy of insurance is chargeable
(ii) in any other case .	Seven rupees eight annas .
	Provided that, if by any one instrument the interest secured by several bonds mortgage deeds or policies of insurance is transferred, the duty payable in respect of such instrument shall be the aggregate of the duties which would have been payable if separate instruments of transfer were executed in respect of each such bond, mortgage deed or policy of insurance
(d) of any property under the Administrator General's Act, 1913, section 25,*	Fifteen rupees
(e) of any trust property without consideration from one trustee to another trustee or from a trustee to a beneficiary	Seven rupees eight annas or such smaller amount as may be chargeable under clauses (a) to (c) of this Article
Exemptions	
Transfers by endorsement—	
(a) of a Bill of Exchange, Cheque or Promissory Note,	
(b) of a Bill of Lading, Delivery Order, warrant for goods, or other mercantile document of title to goods,	
(c) of a Policy of Insurance,	
(d) of securities of the Government of India or the Local Government	
See also section 8	
63 TRANSFER OF LEASE by way of assignment, and not by way of under lease	The same duty as a Conveyance (no 23) for a consideration equal to the amount of the consideration for the transfer
Exemption	
Transfer of any lease exempt from duty	
64 TRUST—	
A —DECLARATION OF—of, or concerning, any property when made by any writing not being a Will	The same duty as a Bond (no 15) for a sum equal to the amount or value of the property concerned but not exceeding twenty two rupees eight annas

* III of 1913

Description of instrument	Proper stamp duty
B—REVOCATION OF—; of, or concerning, any property when made by any instrument other than a Will	The same duty as a Bond (no 15) for a sum equal to the amount or value of the property concerned but not exceeding fifteen rupees
See also Settlement (no 58)	
VALUATION *See* Appraisement (no 8)	
VAKIL *See* Entry as a Vakil (no 30)	
65 WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Six annas

THE INDIAN FINANCE ACT, 1936.

An Act to fix the duty on salt manufactured in, or imported by land into certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act, 1898, and to fix rates of income tax and super tax

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act, 1898 * and to fix rates of income tax and super tax, It is hereby enacted as follows

Short title and extent

1 (1) This Act may be called the Indian Finance Act, 1936

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

Fixation of salt duty

2 The provisions of section 7 of the Indian Salt Act, 1882,† shall in so far as they enable the Governor General in Council to impose by rule made under that section a duty on salt manufactured in, or imported into, any part of British India other than Burma or Aden, be construed as if for the year beginning on the 1st day of April, 1936, they imposed such duty at the rate of one rupee and four annas per maund of eighty two and two sevenths pounds avoirdupois of salt manufactured in or imported by land into, any such part, and such duty shall for all the purposes of the said Act be deemed to have been imposed by rule made under that section

Inland Postage Rates

3 For the year beginning on the 1st day of April, 1936, the Schedule contained in the First Schedule to this Act shall be inserted in the Indian Post Office Act, 1898,* as the First Schedule to that Act.

Income tax and super tax.

4 (1) Income tax for the year beginning on the 1st day of April, 1936, shall be charged at the rates specified in Part I of the Second Schedule, increased in each case by one twelfth of the amount of the rate

(2) The rates of super tax for the year beginning on the 1st day of April 1936, shall, for the purposes of section 55 of the Indian Income tax Act, 1922,‡

* VI of 1898 † XII of 1882

‡ XI of 1922

Description of instrument	Proper stamp duty
and for every Rs 500 or part thereof in excess of Rs 1000	Three rupees twelve annas
(c) of any interest secured by a bond, mortgage deed or policy of insurance—	
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees,	The duty with which such bond mortgage deed or policy of insurance is chargeable
(ii) in any other case ..	Seven rupees eight annas •
	Provided that, if by any one instrument the interest secured by several bonds mortgage deeds or policies of insurance is transferred, the duty payable in respect of such instrument shall be the aggregate of the duties which would have been payable if separate instruments of transfer were executed in respect of each such bond, mortgage deed or policy of insurance
(d) of any property under the Administrator General's Act, 1913, section 25,*	Fifteen rupees
(e) of any trust property without consideration from one trustee to another trustee, or from a trustee to a beneficiary	Seven rupees eight annas or such smaller amount as may be chargeable under clauses (a) to (c) of this Article
Exemptions	
Transfers by endorsement—	
(a) of a Bill of Exchange, Cheque or Promissory Note,	
(b) of a Bill of Lading, Delivery Order, warrant for goods, or other mercantile document of title to goods,	
(c) of a Policy of Insurance,	
(d) of securities of the Government of India or the Local Government	
See also section 8	
63 TRANSFER OF LEASE by way of assignment, and not by way of under lease	The same duty as a Conveyance (no 23) for a consideration equal to the amount of the consideration for the transfer
Exemption	
Transfer of any lease exempt from duty	
64 TRUST—	
A—DECLARATION OF—of or concerning, any property when made by any writing not being a Will	The same duty as a Bond (no 15) for a sum equal to the amount or value of the property concerned but not exceeding twenty two rupees eight annas

* III of 1913

Description of instrument	Proper stamp duty
B—REVOCATION OF—, of or concerning, any property when made by any instrument other than a Will	The same duty as a Bond (no 15) for a sum equal to the amount or value of the property concerned but not exceeding fifteen rupees
See also Settlement (no 58) VALUATION *See* Appraisement (no 8) VAKIL *See* Entry as a Vakil (no 30)	
65 WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns or the holder thereof to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Six annas

THE INDIAN FINANCE ACT, 1936

An Act to fix the duty on salt manufactured in or imported by land into certain parts of British India to fix maximum rates of postage under the Indian Post Office Act 1898, and to fix rates of income tax and super tax

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act 1898 * and to fix rates of income tax and super tax, It is hereby enacted as follows

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Inland Postage Rates

3 For the year beginning on the 1st day of April, 1936, the [illegible] contained in the First Schedule to [illegible] shall be inserted in the Indian Post Off[illegible] 1898 * as the First Schedule to that Act

Income tax and super tax

4 (1) Income tax for the year beginning on the 1st day of A[illegible] shall be charged at the rates specified [illegible] of the Second Schedule, increased [illegible] by one twelfth of the amount of the rate

(2) The rates of super tax for the year beginning on the 1st d[illegible] 1936, shall, for the purposes of section 55 of the Indian Income tax [illegible]

* VI of 1898 † XII of 18[illegible]

‡ XI of 1922

be those specified in Part II of the Second Schedule increased in each case by one twelfth of the amount of the rate

(3) For the purposes of the Second Schedule 'total income means total income as determined for the purposes of income tax or super tax as the case may be, in accordance with the provisions of the Indian Income tax Act 1922 *

(4) For the purpose of any assessment to be made for the year ending 31st March 1937 the rate of income tax applicable to such part of the total income of any person as is derived from salaries or from interest on securities paid in the year ending 31st March, 1936 shall be the previous year s rate and for the purposes of refunds under sub section (1) or sub section (3) of section 48 in respect of dividends declared in the year ending 31st March 1936 or of payments made in the said year of salaries or of interest on securities the rate applicable to the total income of the person claiming refund shall be the previous year s rate

Explanation —In this sub section the term 'previous year s rate with reference to any person means the rate of income tax which would have been applicable to his total income if he had been assessed for the year ending 31st March, 1936 on a total income equal to that on which he is assessable for the year ending 31st March, 1937

SCHEDULE I

Schedule to be inserted in the Indian Post Office Act 1898

[*See* section 3]

THE FIRST SCHEDULE

INLAND POSTAGE RATES

[*See* section 7]

Letters

For a weight not exceeding one tola	One anna
For every tola, or fraction thereof exceeding one tola	Half an anna

Postcards

Single	Nine pies
Reply	One and a half annas

Book, Pattern and Sample Packets

For the first five tolas or fraction thereof	Nine pies
For every additional five tolas or fraction thereof in excess of five tolas	Six pies

Registered Newspapers

For a weight not exceeding ten tolas	Quarter of an anna
For a weight exceeding ten tolas and not exceeding twenty tolas	Half an anna
For every twenty tolas or fraction thereof exceeding twenty tolas	Half an anna

Parcels

For a weight not exceeding twenty tolas	Two annas
For a weight exceeding twenty tolas and not exceeding forty tolas	Four annas
For every forty tolas or fraction thereof exceeding forty tolas	Four annas.

* XI of 1922

SCHEDULE II

[*See* section 4]

PART I

Rates of Income tax

	Rate
A In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(1) When the total income is Rs 2 000 or upwards but is less than Rs 5 000	Six pies in the rupee
(2) When the total income is Rs 5 000 or upwards, but is less than Rs 10 000	Nine pies in the rupee
(3) When the total income is Rs 10,000 or upwards but is less than Rs 15 000	One anna in the rupee
(4) When the total income is Rs 15 000 or upwards, but is less than Rs 20 000	One anna and four pies in the rupee
(5) When the total income is Rs 20,000 or upwards, but is less than Rs 30 000	One anna and seven pies in the rupee
(6) When the total income is Rs 30 000 or upwards but is less than Rs 40 000	One anna and eleven pies in the rupee
(7) When the total income is Rs 40 000 or upwards but is less than Rs 1 00 000	Two annas and one pie in the rupee
(8) When the total income is Rs 1 00,000 or upwards	Two annas and two pies in the rupee
B In the case of every company and registered firm, whatever its total income	Two annas and two pies in the rupee

PART II

Rates of Super tax

	Rate
In respect of the excess over thirty thousand rupees of total income	
(1) in the case of every company—	
(*a*) in respect of the first twenty thousand rupees of such excess	*Nil*
(*b*) for every rupee of the remainder of such excess	One anna in the rupee
(2) (*a*) in the case of every Hindu undivided family—	
(*i*) in respect of the first forty five thousand rupees of such excess	*Nil*
(*ii*) for every rupee of the next twenty five thousand rupees of such excess	One anna and three pies in the rupee
(*b*) in the case of every individual unregistered firm and other association of individuals not being a registered firm or a company—	
(*i*) for every rupee of the first twenty thousand rupees of such excess	Nine pies in the rupee
(*ii*) for every rupee of the next fifty thousand rupees of such excess	One anna and three pies in the rupee
(*c*) in the case of every individual Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(*i*) for every rupee of the next fifty thousand rupees of such excess	One anna and nine pies in the rupee
(*ii*) for every rupee of the next fifty thousand rupees of such excess	Two annas and three pies in the rupee
(*iii*) for every rupee of the next fifty thousand rupees of such excess	Two annas and nine pies in the rupee

(iv) for every rupee of the next fifty thousand rupees of such excess	Three annas and three pies in the rupee
(v) for every rupee of the next fifty thousand rupees of such excess	Three annas and nine pies in the rupee
(v) for every rupee of the next fifty thousand rupees of such excess	Four annas and three pies in the rupee
(vii) for every rupee of the next fifty thousand rupees of such excess	Four annas and nine pies in the rupeee
(viii) for every rupee of the next fifty thousand rupees of such excess	Five annas and three pies in the rupee
(ix) for every rupee of the next fifty thousand rupees of such excess	Five annas and nine pies in the rupee
(x) for every rupee of the remainder of such excess .	Six annas and three pies in the rupee

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This Bill has been consented to by the Council of State

M B DADABHOY
President, Council of State

The 31st March, 1936

I assent to this Bill

WILLINGDON,
Viceroy and Governor General

The 31st March, 1936

This Act has been made by me as Governor General under the provisions of section 67B of the Government of India Act

WILLINGDON
Viceroy and Governor General

The 31st March, 1936

WHEREAS I Freeman, Earl of Willingdon, am of opinion that a state of emergency exists which justifies the direction by me that the Ind an Finance Act 1936 being an Act made by me under the provisions of section 67B of the Government of India Act, shall come into operation forthwith

NOW, THEREFORE in exercise of the power conferred by the proviso to sub section (2) of that section, I do hereby direct accordingly

WILLINGDON,
Viceroy and Governor General

The 31st, March, 1936

ITALIAN LOANS AND CREDITS PROHIBITION ACT, 1936.

ACT NO I OF 1936

Received the G G s assent on the 21st April 1936

AN ACT TO PROHIBIT THE MAKING OF CERTAIN LOANS AND CREDITS

Whereas it is expedient in pursuance of the obligations imposed on India as a signatory to the Covenant of the League of Nations by Article 16 thereof to prohibit the making of certain loans and credits, It is hereby enacted as follows —

Short title and extent

1 (1) — . . . he Italian Loans and C

(2) It extends to the whole of British I and the Sonthal Parganas

Prohibit on of loans

2 No person shall—

(a) make contribute to, participate in or assist in the making or issuing of any loan (wherever the loan is made or issued or to be made or issued) to or for the benefit of—

(i) the Government of any Italian territory, or

(ii) any person (not being a body corporate) of whatever nationality resident in any such territory, or

(iii) any person wherever resident, being a body corporate incorporated under the law of any such territory, or

(b) offer for subscription underwrite or otherwise assist in the issue of or subscribe for any shares, wherever issued or to be issued, in any such body corporate

(2) Any person who either—

(a) by giving a guarantee or by becoming a party to a bill of exchange assumes any liability for payment of money and thereby enables another person to raise money, or

(b) buys a bill of exchange (not being a bill payable on demand) from another person, or

(c) in connection with the sale of goods gives credit in any form to or for the benefit of another person,

shall be deemed for the purposes of sub-section (1) to make a loan to or for the benefit of that other person

(3) Nothing in this section shall be taken to prohibit the performance of any contract made before the 18th day of November, 1935 with any Government or person other than such a Government or person as is mentioned [illegible] he provisions of this [illegible] ontract [illegible] for the benefit of an [illegible] Council to be for the purposes of this section an institution having a humanitarian or religious object

Penalty for contravention of section 2

3 Whoever contravenes the provisions of section 2 shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both

Liability of Director or other officer of body corporate

4 Where any contravention of section 2 by a body corporate is proved to have been committed with the consent or approval of or to have been facilitated by any neglect on the part of any Director, Manager, Secretary or other officer of such body corporate, he as well as such body corporate shall be deemed to be guilty of the contravention and shall be punishable with the punishment provided for the offence

Repeal of Ordinance III of 1935

5 The Italian Loans and Credits Prohibition Ordinance, 1935,* is hereby repealed

Termination of Act

6 The Governor General in Council may, by notification in the Gazette of India, declare that with effect from such date as may be specified in the notification this Act shall cease to be in operation and upon the issue of such notification this Act shall be deemed to be repealed on the date so specified

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SALT ADDITIONAL IMPORT DUTY (EXTENDING) ACT 1936

ACT NO II OF 1936

Received the G G's assent on the 21st April 1936.

AN ACT FURTHER TO EXTEND THE OPERATION OF THE SALT (ADDITIONAL IMPORT DUTY) ACT 1931

WHEREAS it is expedient further to extend the operation of the Salt (Additional Import Duty) Act 1931†, It is hereby enacted as follows —

Short title

1 This Act may be called the Salt Additional Import Duty (Extending) Act, 1936

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* Ord III of 1935

† XIV of 1931

2 In sub section (3) of section 1 of the Salt (Additional Import Duty) Act, 1931* (hereinafter referred to as the said Act) for the figures "1936" the figures "1938 shall be substituted

Amendment of section 1, Act XIV of 1931

3 In sub section (1) of section 3 of the said Act, for the word "two" the word 'one" shall be substituted.

Amendment of section 3, Act XIV of 1931

PARSI MARRIAGE AND DIVORCE ACT, 1936

Act No III Of 1936

Received the G G s assent on the 23rd April 1936

AN ACT TO AMEND THE LAW RELATING TO MARRIAGE AND DIVORCE AMONG PARSIS

WHEREAS it is expedent to amend the law relating to marriage and divorce among Parsis It is hereby enacted as follows —

I —PRELIMINARY

Short title, extent and commencement

1 (1) This Act may be called the Parsi Marriage and Divorce Act, 1936

(2) It extends to the whole of British India and, in respect of Parsi subjects of His Majesty, to the whole of India

Provided that the Governor General in Council may, in respect of territories in India beyond the limits of British India by notification in the Gazette of India, direct that the provisions of this Act relating to the constitution and powers of Parsi Matrimonial Courts and to appeals from the decisions and orders of such Courts shall apply with such modifications as may be specified in the notification

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint

Definitions

2 In this Act unless there is anything repugnant in the subject or context,—

(1) "Chief Justice" includes senior Judge,

(2) 'Court' means a Court constituted under this Act,

(3) to "desert' together with its grammatical variations and cognate expressions, means to desert the other pary to a marriage without reasonable cause and without the consent, or against the will, of such party,

(4) "grievous hurt' means—

(a) emasculation,

(b) permanent privation of the sight of either eye,

(c) permanent privation of the hearing of either ear,

(d) privation of any member or joint,

(e) destruction or permanent impairing of the powers of any member or joint,

(f [illegible] or face, or

(g [illegible]

(5) [illegible]

(6) "marriage means a marriage between Parsis whether contracted before or after the commencement of this Act,

(7) a "Parsi" means a Parsi Zoroastrian,

(8) "priest' means a Parsi priest and includes Dastur and Mobed, and

(9) 'wife" means a Parsi wife

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* XIV of 1931

II —Marriages between Parsis

Requisites to validity of Parsi marriages

3 No marriage shall be valid if—

(a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I, or

(b) *such marriage is not solemnized according to the Parsi form of ceremony* called "Ashirvad" by a priest in the presence of two Parsi witnesses other than such priest, or

(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who has not completed the age of twenty one years, the consent of his or her father or guardian has not been previously given to such marriage

Remarriage when unlawful

4 (1) No Parsi (whether such Parsi has changed his or her religion or domicile or not) shall contract any marriage under this Act or any other law in the lifetime of his or her wife or husband, whether a Parsi or not, except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared null and void or dissolved, and, if the marriage was contracted with such wife or husband under the Parsi *Marriage and Divorce Act, 1865,* or under this Act, except after a divorce,* declaration or dissolution as aforesaid under either of the said Acts

(2) Every marriage contracted contrary to the provisions of sub-section (1) shall be void

Punishment of bigamy

5 Every Parsi who during the lifetime of his or her wife or husband, whether a Parsi or not, contracts a marriage without having been lawfully divorced from such wife or husband or without his or her marriage with such wife or husband having legally been declared null and void or dissolved, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code† for the offence of marrying again during the lifetime of a husband or wife

Certificate and registry of marriage

6 Every marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty one years, and two witnesses present at the marriage, and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to the Registrar of the place at which such marriage is solemnized The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee

Appointment of Registrar

7. For the purposes of this Act a Registrar shall be appointed Within the local limits of the ordinary original civil jurisdiction of a High Court, the Registrar shall be appointed by the Chief Justice of such Court, and without such limits, by the Local Government Every Registrar so appointed may be removed by the Chief Justice or Local Government appointing him

Marriage register to be open for public inspection

8 The register of marriages mentioned in section 6 shall, at all reasonable times be open for inspection, and certified extracts therefrom shall, on application, be given by the Registrar on payment to him by the applicant of two rupees for each such extract Every such register shall be evidence of the truth of the statements therein contained

* XV of 1865

† XLV of 1860

Copy of certificate to be sent to Registrar General of Births Deaths and Marriages

9 Every Registrar except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall at such intervals as the Local Government by which he was appointed from time to time directs send to the Registrar General of Births Deaths and Marriages for the territories administered by such Local Government a true copy certified by him in such form as such Local Government from time to time prescribes of all certificates entered by him in the said register of marriages since the last of such intervals

Registration of divorces

10 When a Court passes a decree for divorce nullity or dissolution the Court shall send a copy of the decree for registration to the Registrar of Marriages within its jurisdiction appointed under section 7, the Registrar shall enter the same in a register to be kept by him for the purpose, and the provisions of Part II applicable to the Registrars and registers of marriages shall be applicable so far as may be to the Registrars and registers of divorces and decrees of nullity and dissolution

Penalty for solemnizing marriage contrary to section 4

11 Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of section 4 shall, on conviction thereof be punished with simple imprisonment *for a term which may* extend to six months or with fine which may extend to two hundred rupees or with both

Penalty for priest's neglect of requirements of section 6

12 Any priest neglecting to comply [illegible] him contair[illegible] thereof be [illegible] simple imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees or with both

Penalty for omitting to subscribe and attest certificate

13 Every other person required by section 6 to subscribe or attest the said certificate who shall wilfully omit or neglect so to do, shall, on conviction thereof be punished for every such offence with a fine not exceeding one hundred rupees

Penalty for making etc, false certificate

14 Every person making or signing or attesting any such certificate containing a statement which is false and which he either knows or believes to be false, shall be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to one hun[illegible] [illegible] forgery as defined in the [illegible] on conviction there[illegible]

Penalty for failing to register certificate

15 Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both

Penalty for secreting destroying or altering register

16 Any person secreting destroying or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code* for

* XLV of 1860

a term which may extend to two years, or if he be a Registrar, for a term which may extend to five years and shall also be liable to fine which may extend to five hundred rupees

Formal irregularity not to invalidate marriage

17. No marriage contracted under this Act shall be deemed to be invalid solely by reason of the fact that it was not certified under section 6, or that the certificate was not sent to the Registrar, or that the certificate was defective, irregular or incorrect

III.—Parsi Matrimonial Courts

Constitution of Special Courts under the Act

18 For the purpose of hearing suits under this Act, a special Court shall be constituted in each of the Presidency towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit

Parsi Chief Matrimonial Courts

19 The Court so constituted in each of the Presidency towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta Madras or Bombay, as the case may be The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be conterminous with the local limits of the ordinary original civil jurisdiction of the High Court The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided by seven delegates,

Parsi District Matrmonial Courts

20 Every Court so constituted at a place other than a Presidency town shall be entitled the Parsi District Matrimonial Court of such place Subject to the provisions contained in section 21, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and in the trial of cases under this Act he shall be aided by seven delegates

Power to alter territorial jurisdiction of District Courts

21 The Local Government may from time to time alter the local limits of the jurisdiction of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its government

Certain districts to be within jurisdiction of the Chief Matrimonial Court

22 Any district which the Local Government, on account of the fewness of its Parsi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such Local Government where there is such a Court

Court seal

23 A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge

Appointment of delegates

24 (1) The Local Governments shall in the Presidency towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act, after giving the local Parsis an opportunity of expressing their opinion in such manner as the respective Governments may think fit

(2) The persons so appointed shall be Parsis, their names shall be published in the local official Gazette and their number shall, within the local limits of

the ordinary original civil jurisdiction of a High Court be not more than thirty and in districts beyond such limits not more than twenty

Power to appoint new delegates

25 The appointment of a delegate shall be for ten years, but he shall be eligible for reappointment for the like term or terms Whenever a delegate shall die or have completed his term of office, or be desirous of relinquishing his office or refuse or become incapable or unfit to act, or cease to be a Parsi or be convicted of an offence under the Indian Penal Code* or other law for the time being in force or be adjudged insolvent then and so often the Local Government may appoint any person being a Parsi to be a delegate in his stead, and the name of the person so appointed shall be published in the local official Gazette

Delegates to be deemed public servants

26 All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code*

Selection of delegates under sections 19 and 20 to be from those appointed under section 24

27 The delegates selected under sections 19 and 20 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under section 24

Provided that each party to the suit may without cause assigned challenge any three of the delegates attending the Court before such delegates are selected and no delegate so challenged shall be selected

Practitioners in Matrimonial Courts

28 All legal practitioners entitled to practise in a High Court shall be entitled to practise in any Court constituted under this Act and all legal practitioners entitled to practise in a District Court shall be entitled to practise in any Parsi District Matrimonial Court constituted under this Act

Court in which suits to be brought

29 (1) All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit

(2) When the defendant shall at such time have left British India such suit shall be brought in the Court at the place where the plaintiff and defendant last resided *together*

(3) [illegible] whether the defendant resides in British India or not such [illegible] plaintiff resides or at [illegible] resided together, if such Court after recording its reasons in writing grants leave so to do

IV —MATRIMONIAL SUITS

Suits for nullity

30 In any case in which consummation of the marriage is from natural causes impossible such marriage may, at the instance of either party thereto be declared to be null and void

Suits for dissolution

31 If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years and shall not have been heard of as being alive within that time by those persons who would have naturally heard of him or her had he or she been alive the marriage of such husband or wife may, at the instance of either party thereto, be dissolved

* XLV of 1860

Grounds for divorce

32 Any married person may sue for divorce on any one or more of the following grounds, namely —

( ) th t th marr ge has not been cons mmated th ... r its

und

Provided that divorce shall not be granted on this ground unless the plaintiff (1) was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years from the date of the marriage ,

(c) that the defendant was at the time of marriage pregnant by some person other than the plaintiff

Provided that divorce shall not be granted on this ground, unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged (2) the suit has been filed within two years of the date of marriage and (3) marital intercourse has not taken place after the plaintiff came to know of the fact ,

(d) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact ,

(e) that the defendent has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years (i) after the infliction of the grievous hurt or (ii) after the plaintiff came to know of the infection or (iii) after the last act of compulsory prostitution

(f) that the defendant is uudergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code : *

Provided that divorce shall not be granted on this ground unless the defendant has prior to the filing of the suit undergone at least one year s imprisonment out of the said period

(g) that the defendant has deserted the plaintiff for at least three years ,

(h) that a decree or order for judicial separation has been passed against the defendant, or an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff and the parties have not had marital intercourse for three years or more since such decree or order

(i) that the defendant has failed to comply with a decree for restitution of conjugal rights for a year or more , and

(j) that the defendant has ceased to be a Parsi

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact

Joining of co defendant

33 In every such suit for divorce on the ground of adultery the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co defendant and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings

Suits for judicial separation

34 Any married person may sue for judicial separation on any of the grounds for which such person could have filed a suit for divorce or on the ground that the defendant has been guilty of such cruelty to him or her or their children or has used such

* XLV of 1860.

personal violence, or has behaved in such a way as to render it in the judgment of the Court improper to compel him or her to live with the defendant

Decrees in certain suits

35 In any suit under section 30, 31 32, or 34, whether defended or not, if the Court be satisfied that any of the grounds set forth in those sections for granting relief exist, that none of the grounds therein set forth for withholding relief exist and that—

(a) the act or omission set forth in the plaint has not been condoned,

(b) the husband and wife are not colluding together,

(c) the plaintiff has not connived at or been accessory to the said act or omission,

(d) (save where a definite period of limitation is provided by this Act) there has been no unnecessary or improper delay in instituting the suit, and

(e) there is no other legal ground why relief should not be granted,

then and in such case, but not otherwise, the Court shall decree such relief accordingly

Suit for restitution of conjugal rights

36. Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly

Counter claim by defendant for any relief

37 In any suit under this Act, the defendant may make a counter claim for any relief he or she may be entitled to under this Act

No suit to be brought to enforce marriage or contract arising out of marriage when husband is under sixteen years or wife under fourteen years

38 Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage or any contract connected with or arising out of any marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years

Alimony *pendente lite*

39. In any suit under this Act if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife may order the husband to pay her monthly or weekly during the suit such sum not exceeding one fifth of her husband's net income as the Court, considering the circumstances of the parties, shall think reasonable

Permanent alimony

40 (1) The Court may, if it shall think fit at the time of passing any decree under this Act or subsequently thereto on application made to it for the purpose, order that the husband shall —

(a) to the satisfaction of the Court, secure to the wife while she remains chaste and unmarried such gross sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any her husband s ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties and suspend the pronouncing of its decree until such instruments shall have been duly executed, or

(b) make such monthly payments to the wife for her maintenance and support as the Court may think reasonable

In case any such order shall not be obeyed by her husband it may be enforced in the manner provided for the execution of decrees and orders under the Code

of Civil Procedure 1908,* and further the husband may be sued by any person supplying the wife with necessaries during the time of such disobedience for the price of such necessaries

(2) The Court if satisfied that there is a change in the circumstances of either party at any time may at the instance of either party vary modify or rescind such order in such manner as the Court may deem just

Payment of alimony to wife or to her trustee

41 In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do

Disposal of joint property

42 In any suit under this Act the Court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife

Suits may be heard with closed doors

43 In every suit preferred under this Act, the case shall be tried with closed doors should such be the wish of either of the parties

Validity of trial

44 Notwithstanding anything contained in section 19 or section 20, where in the case of a trial in a Parsi Matrimonial Court not less than five delegates have attended throughout the proceedings the trial shall not be invalid by reason of the absence during any part thereof of the other delegates

Provisions of Civil Procedure Court to apply to suits under the Act

45 The provisions of the Code of Civil Procedure, 1908 * shall so far as the same may be applicable apply to proceeding in suits instituted under this Act including proceedings in execution and orders subsequent to decree

Determination of questions of law and procedure and of fact

46 In suits under this Act all questions of law and procedure shall be determined by the presiding Judge but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried

Provided that where such delegates are equally divided in opinion the decision on the facts shall be the decision of the presiding Judge

Appeal to High Court

47 An appeal shall lie to the High Court from—

(a) the decision of any Court established under this Act, whether a Chief Matrimonial Court or District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits and on no other ground and

(b) the granting of leave by any such Court under sub section (3) of section 29,

Provided that such appeal shall be instituted within three calendar months after the

Liberty ... again

48 any decree gran or dissolving a no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed or when in the result of any appeal a divorce has been granted or a marriage has been declared to be annulled or

* v of 1908

dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been terminated by death

V —CHILDREN OF THE PARTIES

Custody of children

49 In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the final decree as it may deem just and proper with respect to the custody maintenance and education of the children under the age of sixteen years the marriage of whose parents is the subject of such suit and may, after the final decree upon application, by petition for this purpose, make, revoke suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such final decree or by interim orders in case the suit for obtaining such decree were still pending

Settlement of wife s property for benefit of children

50 In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of any part of such property not exceeding one half thereof for the benefit of the children of the marriage or any of them

VI —MISCELLANEOUS

Superintendence of High Court

51 The High Court shall have superintendence over all Courts constituted under this Act subject to its appellate jurisdiction in the same manner as it has over other Courts under section 107 of the Government of India Act and all the provisions of that section shall apply to such Courts

Applicability of provisions of the Act

52 (1) The provisions of this Act shall apply to all suits to which the same are applicable whether the circumstances relied on occurred before or after the passing of this Act, and whether any decree or order referred to was passed under this Act or under the law in force before the passing of this Act, and where any proceedings are pending in any Court at the time of the commencement of this Act, the Court shall allow such amendment of the pleadings as may be necessary as the result of the coming into operation of this Act

(2) A Parsi who has contracted a marriage under the Parsi Marriage and Divorce Act, 1865 * or under this Act, even though such Parsi may change his or her religion or domicile so long as his or her wife or husband is alive and so long as such Parsi has not been lawfully divorced from such wife or husband or such marriage has not lawfully been declared null and void or dissolved under the decree of a competent Court under either of the said Acts shall remain bound by the provisions of this Act

Repeal

53 The Parsi Marriage and Divorce Act 1865 is hereby repealed

SCHEDULE I

(*See* Section 3)

Table of prohibited degrees of consanguinity and affinity

A man shall not marry his—

1 Paternal grand father s mother
2 Paternal grand mother s mother
3 Maternal grand father's mother
4 Maternal grand mother's mother
5 Paternal grand mother

* XV of 1865

6 Paternal grand father's wife
7 Maternal grand mother
8 Maternal grand father's wife
9 Mother or step mother
10 Father's sister or step sister
11 Mother's sister or step sister
12 Sister or step sister
13 Brother's daughter or step brother's daughter, or any direct lineal descendant of a brother or stepbrother
14 Sister's daughter or step sister's daughter, or any direct lineal descendant of a sister or step sister
15 Daughter or step daughter, or any direct lineal descendant of either
16 Son's daughter or step son's daughter, or any direct lineal descendant of a son or step son
17 Wife of son or step son, or of any direct lineal descendant of a son or step son
18 Wife of daughter's son or of step daughter's son, or of any direct lineal descendant of a daughter or step daughter
19 Mother of daughter's husband
20 Mother of son's wife
21 Mother of wife's paternal grand father
22 Mother of wife's paternal grand mother
23 [illegible]
24
25
26
27
28
29 Wife's mother's sister
30 Father's brother's wife
31 Mother's brother's wife
32 Brother's son's wife
33 Sister's son's wife

A woman shall not marry her—

1 Paternal grand father's father
2 Paternal grand mother's father
3 Maternal grand father's father
4 Maternal grand mother's father
5 Paternal grand father
6 Paternal grand mother's husband
7 Maternal grand father
8 Maternal grand mother's husband
9 Father or step father
10 Father's brother or step brother
11 Mother's brother or step brother
12 Brother or step brother
13 Brother's son or step brother's son, or any direct lineal descendant of a brother or step-brother
14 Sister's son or step sister's son, or any direct lineal descendant of a sister or step sister
15 Son or step son or any direct lineal descendant of either
16 Daughter's son or step daughter's son, or any direct lineal descendant of a daughter or step daughter
17 Husband of daughter or of step-daughter or of any direct lineal descendant of a daughter or step daughter
18 Husband of son's daughter or of step son's daughter, or of any direct lineal descendant of a son or step-son
19 [illegible]
20
21
22
23
24
25
26 [illegible] maternal grand father

27 Husband s father or step father
28 Brother of husband s father
29 *Brother of husband s mother*
30 Husband s brother's son, or his direct lineal descendant
31 Husband s sister s son, or his direct lineal descendant
32 Brother's daughter s husband
33 Sister's daughter s husband

Note —In the above table the words brother and sister denote brother and sister of the whole as well as half blood Relationship by step means relationship by marriages

SCHEDULE II

(*See* Section 6)

Certificate of Marriage

Date and place of marriage

Names of the husband and wife

Condition at the time of marriage

Rank or profession

Age

Residence

Names of the Fathers or Guardians

Rank or profession

Signature of the officiating Priest

Signatures of the contracting parties

Signatures of the fathers or guardians of the contracting parties under 21 years of age

Signatures of witnesses

PAYMENT OF WAGES ACT, 1936

ACT NO IV OF 1936

RECEIVED THE G G'S ASSENT ON THE 23RD APRIL 1936

An Act to regulate the payment of wages to certain classes of persons employed in industry

WHEREAS it is expedient to regulate the payment of wages to certain classes of persons employed in industry, It is hereby enacted as follows —

Short title, extent, commencement and application

1 (1) This Act may be called the Payment of Wages Act, 1936

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

(3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub contractor, by a person fulfilling a contract with a railway administration

(5) The Local Government may after giving three months' notice of its intention of so doing, by notification in the local official Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishments

(6) Nothing in this Act shall apply to wages payable in respect of a wage period which, over such wage period average two hundred rupees a month or more

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(i) "factory" means a factory as defined in clause (j) of section 2 of the Factories Act, 1934,*

(ii) "industrial establishment means any—

(a) tramway or motor omnibus service,

(b) dock, wharf or jetty,

(c) inland steam vessel,

(d) mine, quarry or oil field,

(e) plantation,

(f) workshop or other establishment in which articles are produced adapted or manufactured, with a view to their use, transport or sale,

(iii) plantation means any estate which is maintained for the purpose of growing cinchona, rubber, coffe or tea, and on which twenty five or more persons are employed for that purpose,

(iv) 'prescribed means prescribed by rules made under this Act,

(v) 'railway administration' has the meaning assigned to it in clause (6) of the section 3 of the Indian Railways Act, 1890 † and

(vi) 'wages' means all remuneration capable of being expressed in terms of money, which would if the terms of the contract of employment express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment but does not include—

(a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the Governor General in Council or Local Government,

(b) any contribution paid by the employer to any pension fund or provident fund,

(c) any travelling allowance or the value of any travelling concession,

* XXV of 1934

† IX of 1890

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment, or

(e) any gratuity payable on discharge

Responsibility for payment of wages

3 Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act

Provided that in the case of persons employed (otherwise than by a contractor)—

(a) in factories if a person has been named as the manager of the factory under clause (e) of sub-section (1) of section 9 of the Factories Act 1934 *

(b) in industrial establishments if there is a person responsible to the employer for the supervision and control of the industrial establishment

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned

the person so named the person so responsible to the employer or the person so nominated as the case may be, shall be responsible for such payment

Fixation of wage periods

4 (1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage periods) in respect of which such wages shall be payable

(2) No wage period shall exceed one month

Time of payment of wages

5 (1) The wages of every person employed upon or in—

(a) any railway factory or industrial establishment upon or in which employed shall be paid before the expiry

or industrial establishment shall be paid before the expiry of the tenth day

after the last day of the wage-period in respect of which the wages are payable

(2) Where the employment of any person is terminated by or on behalf of the employer the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated

(3) The Governor General in Council may by general or special order exempt to such extent and subject to such conditions as may be specified in the order the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such persons or class of such persons

(4) All payments of wages shall be made on a working day

Wages to be paid in current coin or currency notes

6 All wages shall be paid in current coin or currency notes or in both

Deductions which may be made from wages

7 (1) Notwithstanding the provisions of sub-section (2) of section 47 of the Indian Railways Act 1890 † the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act

Explanation —Every payment made by the employed person to the employer or his agent shall for the purposes of this Act be deemed to be a deduction from wages

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act and may be of the following kinds only namely —

(a) fines,

* XXV of 1934 † IX of 1890

(*b*) deductions for absence from duty

(*c*) deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default,

(*d*) deductions for ,

(*e*) deductions for nployer as the Governor Genera general or special order, authorise,

Explanation—The word 'services' in this sub clause does not include the supply of tools and raw materials required for the purposes of employment

(*f*) deductions for recovery of advances or for adjustment of over payments of wages,

(*g*) deductions of income tax payable by the employed person,

(*h*) deductions required to be made by order of a Court or other authority competent to make such order,

(*i*) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925,* applies or any recognised provident fund as defined in section 58 A of the Indian Income tax Act, 1922,† or any provident fund approved in this behalf by the Local Government during the continuance of such approval, and

(*j*) deductions for payments to co operative societies approved by the Local Government or to a scheme of insurance maintained by the Indian Post Office

Fines

8 (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the Local Government or of the prescribed authority may have specified by notice under sub section (2)

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines

(4) The total amount of fine which may be imposed in any one wage period on any employed person shall not exceed an amount equal to half an anna in the rupee of the wages payable to him in respect of that wage period

(5) No fine shall be imposed on any employed person who is under the age of fifteen years

(6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed, and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority

Explanation—When the persons employed upon or in any railway, factory or industrial establishment are part only of a staff employed under the same management, all such realisations may be credited to a common fund

* XIX of 1925 † XI of 1922

maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority

Deductions for absence from duty

9 (1) Deductions may be made under clause (*b*) of sub section (2) of section 7 only on account of the absence of an employed person from the place or places where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage period, during which by the terms of his employment, he was required to work

Provided that, subject to any rules made in this behalf by the Local Government, if ten or more employed persons acting in concert absent them selves without due notice (that is to say, without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice

Deductions for damage or loss

10 (1) A deduction under clause (*c*) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed

Deductions for services rendered

11 A deduction under clause (*d*) or clause (*e*) of sub section (2) of section 7 shall not be made from the wages of an employed person, unless the house accommodation amenity or service has been accepted by him, as a term of employment or otherwise, and such deductions shall not exceed an amount equivalent to the value of the house accomodation amenity or service supplied and in the case of a deduction under the said clause (*e*), shall be subject to such conditions as the Governor General in Council or the Local Government may impose

Deductions for recovery of advances

12 Deductions under clause (*f*) of sub-section (2) of section 7 shall be subject to the following conditions, namely —

(*a*) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advances given for travelling expenses,

(*b*) recovery of advances of wages not already earned shall be subject to any rules made by the Local Government regulating the extent to which such advances may be given and the instalments by which they may be recovered

Deductions for payments to co-operative societies and insurance schemes

13 Deductions under clause (*j*) of sub-section (2) of section 7 shall be subject to such conditions as the Local Government may impose

Inspectors

14 (*I*) An Inspector of Factories appointed under sub section of section 10 of the Factories Act, 1934,* shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him

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* XXV of 1934

The Governor General in Council may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies

(3) The Local Government may, by notification in the local official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions

(4) An Inspector may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code *

Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims

15 (1) The Local Government may, by notification in the local official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub section (1) may apply to such authority for a direction under sub section (3)

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period

[illegible] ority [illegible] pay [illegible] and

after such further inquiry (if any) as may be necessary may without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a *bona fide* error or *bona fide* dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment

* XLV of 1860

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application

(5) Any amount directed to be paid under this section may be recovered—

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a find imposed by such Magistrate

Single application in respect of claims from unpaid group

16 (1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage period or periods have remained unpaid after the day fixed by section 5

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group and in such case the maximum compensation that may be awarded under sub section (3) of section 15 shall be ten rupees per head

(3) The authority may deal with any number of separate pending applications presented under section 15 in respect of persons belonging to the same unpaid group as a single application presented under sub section (2) of this section, and the provisions of that sub section shall apply accordingly

Appeal

17 (1) An appeal against a direction made under subsection (3) of section 15 may be preferred within thirty days of the date on which the direction was made, in a Presidency town or in Rangoon before the Court of Small Causes and elsewhere before the District Court—

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by the way of wages and compensation exceeds three hundred rupees or

(b) by an employed person if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under sub section (5) of section 15

(2) Save as provided in sub section (1) any direction made under sub-section (3) or sub section (5) of section 15 shall be final

Power of authorities appointed under section 15

18 Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure 1908 * for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 †

Power to recover from employer in certain cases

19 When the authority referred to in section 15 or the Court referred to in section 17 is unable to recover from any person (other than an employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person the authority shall recover the amount from the employer of the employed person concerned

* V of 1908 † V of 1898

Penalty for offences under the Act

20 (1) Whoever being responsible for the payment of wages to an empl person contravenes any of the provisions of of the following sections, namely, section 5 sections 7 to 13, both inclusive, shall be pu oble with fine which may extend to five hundred rupees

(2) Whoever contravenes the provisions of section 4, section 6 or se 25 shall be punishable with fine which may extend to two hundred rupees

Procedure in trial of offences

21 (1) No Court shall take cognizance of a complaint against any p for an offence under sub section (1) of sectio unless an application in respect of the facts stituting the offence has been presented under section 15 and has been gr wholly or in part and the authority empowered under the latter section o appellate Court granting such application has sanctioned the making of complaint

(2) Before sanctioning the making of a complaint against any person f offence under sub-section (1) of section 20, the authority empowered u section 15 or the appellate Court, as the case may be, shall give such p an opportunity of showing cause against the granting of such sanction, and sanction shall not be granted if such person satisfies the authority or C *that his default was due to—*

(*a*) a *bond fide* error or *bona fide* dispute as to the amount payable to employed person, or

(*b*) the occurrence of an emergency, or the existence of exceptional cumstances, such that the person responsible for the payment of the wages unable, though exercising reasonable diligence, to make prompt payment, or

(*c*) the failure of the employed person to apply for or accept payment

(3) No Court shall take cognizance of a contravention of section of section 6 or of a contravention of any rule made under section 26 e on a complaint made by or with the sanction of an Inspector under this Act

(4) In imposing any fine for an offence under sub section (1) of sectio the Court shall take into consideration the amount of any compensation alr awarded against the accused in any proceedings taken under section 15

Bar of suits

22 No Court shall entertain any suit for the recovery of wages c any deduction from wages in so far as the su claimed—

(*a*) forms the subject [illegible] 15 which has presented by the plaintiff [illegible] thority appoi under that section or of [illegible]

(*b*) has formed the [illegible] 15 in favou the plaintiff, or

(*c*) has been adjudged, in any proceeding under section 15, not t owed to the plaintiff, or

(*d*) could have been recovered by an application under section 15

Contracting out

23 Any contract or agreement, whether made before or after the c mencement of this Act, whereby an empl person relinquishes any right conferred by Act shall be null and void in so far as it purports to deprive hi such right

Powers to be exercised by Governor General in Council.

24 The powers by this Act conferred upon the Local Govern shall be exercised by the Governor Genera Council in any case in which the exercise of powers affects any persons employed by a way administration.

25 The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory as may be prescribed.

Display by notice of abstracts of the Act

26 (1) The Governor General in Council may make rules to regulate the procedure to be followed by the authorities and Courts referred in sections 15 and 17

Rule making power

(2) The Local Government may subject to the control of the Governor General in Council, by notification in the local official Gazette, make rules for the purpose of carrying into effect the provisions of this Act

(3) In particular and without prejudice to the generality of the foregoing power rules made under sub-section (2) may—

(a) require the maintenance of such records registers, returns and notices as are necessary for the enforcement of the Act and prescribe the form thereof,

(b) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises,

(c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them,

(d) prescribe the manner of giving notice of the days on which wages will be paid,

(e) prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be imposed,

(f) prescribe the procedure for the imposition of fines under section 8 and for the making of the deductions referred to in section 10

(g) prescribe the conditions subject to which deductions may be made under the proviso to sub section (2) of section 9,

(h) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended,

(i) prescribe the extent to which advances may be made and the instalments by which they may be recovered with reference to clause (b) of section 12,

(j) regulate the scales of costs which may be allowed in proceedings under this Act,

(k) prescribe the amount of court fees payable in respect of any proceedings under this Act, and

(l) prescribe the abstracts to be contained in the notices required by section 25

(4) In making any rule under this section the Local Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees

(5) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act 1897,* shall not be less than three months from the date on which the draft of the proposed rules was published

* X of 1897

END OF VOL II

SUPPLEMENT TO BASU'S C. C. HAND BOOK VOL. II.

Amendments made by the Government of India (Adaptations of Indian Laws) Order, 1937.

CONTINUED FROM VOL. I

XXXVI, Land Acquisition Act, 1894

(I of 1894)

Section 3—In paragraph (e) for "of the Governor-General in Council" substitute "by an Indian law"

Sections 16 and 17—For "vest absolutely in the Government" substitute "vest absolutely in the Crown"

Section 41—For "with the Secretary of State for India in Council" substitute "with the Provincial Government" and for "payment to Government" substitute "payment to the Provincial Government"

Section 42—Omit "in the *Gazette of India* and also"

Section 43—Omit from "under any agreement" to the end of the section, and insert "under any agreement with such company the Secretary of State for India in Council the Secretary of State, or any Government in British India is or was bound to provide fund"

Section 55—Omit the proviso to sub section (1)

XXXVII The Land Acquisition (Mines) Act, 1885

(XVIII of 1885)

Sections 2 and 3—For "Government" substitute "the Crown"

XXXVIII The Indian Law Reports Act, 1875

(XVIII of 1875)

Omit the preamble

In section 3 for the words from "decided by" to "the said day" substitute "decided on or after the said day by any Court in British India which is a High Court for the purposes of the Government of India Act 1935"

XXXIX The Laws Local Extent Act 1874

(XV of 1874)

Omit from the Schedules the references to the Bengal State Prisoners Regulation 1818, the Madras Regulation II of 1819 the Bombay Regulation XXV of 1827, the State Prisoners Act 1850 and the State Prisoners Act, 1858

Omit Part XI of the sixth Schedule

XL. The Indian Life Assurance Companies Act, 1912.

(VI of 1912)

Section 2—For "Local Government" substitute "Central Government"

Omit section 40

The Third schedule—For "British and Colonial" substitute "British Dominions and Colonial", for "whereon interest is guaranteed by the Indian Government" substitute "whereon interest is guaranteed by any Government in British India [illegible]"

the Secretary of State as successor to the Secretary of State for India in Council" ; and for 'the British or any Colonial Government' substitute 'the British, the Burma or any Colonial Government"

XLI The Indian Limitation Act, 1908

(IX of 1908)

Section 13—For "the Government" substitute "the Central Government or the Crown Representative"

Section 26—For Government" substitute "the Crown"

The First Schedule—In article (149) after 'India in Council" insert "the Secretary of State the Crown Representative, the Central Government or any Provincial Government", in article (151) for 'Lahore and Rangoon" substitute "and Lahore', and in article (162) omit Rangoon

XLII. The Local Authorities Loans Act 1914

(IX of 1914)

Section 2—At the end of the section insert—

' 'The Government' 'or the appropriate Government' means, in relation to cantonment authorities and in relation to port authorities in major ports, the Central Government, and in relation to other local authorities, the *Provincial Government*'

Section 3—For 'Local Government" and "Governor General in Council' substitute 'appropriate Government'

Sections 4 and 5—For 'Local Government" substitute "appropriate Government"

Section 6—For "Governor-General in Council' substitute "appropriate Government"

For section 8 substitute—

'8 The remedy mentioned in section 5 shall be available for the recovery of any money lent by the Secretary of State in Council to any local authority before the fifth day of September, eighteen hundred and seventy one, and the interest due on such money

Application of Act to loans existing prevous to the fifth September, 1871

Schedule 1—The entries relating to the Municipal Committee of Rangoon and the Commissioners for the port of Rangoon shall be omitted

XLIII The Local Authorities Pensions and Gratuitute Act, 1919.

(I of 1919)

Section 2—For "the service of Government" substitute "service under the Crown" and at the end of the section add 'and, the 'appropriate Government' means in relation to cantonment authorities and port authorities in major ports, the Central Government, and in relation to other authorities, the Provincial Government"

Section 3—For the service of Government" substitute 'service under the Crown"

Section 4—For 'the Governor General in Council" substitute 'the Central Government or any Provincial Government"; for "the local Government" substitute "the appropriate Government"; and for 'under Government" substitute 'under the Crown"

Section 5—For Local Government" substitute 'appropriate Government"

XLIV. The Indian Lunacy Act, 1912

(IV of 1912)

Section 2—For "established under the Indian High Courts Acts, 1851 to 1911" substitute constituted by His Majesty by Letters Patent"

[illegible] Government" substitute "by any Govern [illegible] nor General in Council" substi [illegible] for 'medical officer of Govern- [illegible] Crown"

Section 17 —Omit 'or Rangoon"

Section 22 and 35 —For 'any asylum established by Government substitute "any Government asylum

For section 89A substitute —

'89A (1) In computing the amount payable on account of the cost of maintenance of lunatics detained in any asylum for the cost of whose maintenance any Provincial Government is liable charges may be included on account of the up keep of the asylum and of the capital cost of establishment thereof

Fixation of cost of maintenance

(2) In the case of any such lunatic under detention immediately before the commencement of Part III of the Government of India Act 1935 the amount payable by any Provincial Government on account of the cost of his maintenance shall be determined in accordance with any general or special orders of the Governor General in Council in force immediately before that date and applicable to his case "

Section 89B —Omit sub-section ( )

Section 91 —In paragraph (1) of sub section (1) for 'established under the Indian High Courts Acts 1861 to 1911 substitute constituted by His Majesty by Letters Patent and in paragraph (g) for asylums established by Government substitute Government asylums"

Section 95 —For by Government" substitute "by the Secretary of State or any Government in British India" and in sub section (2) for the Secretary of State for India in Council substitute the Secretary of State or as the case may be, the Government concerned"

Section 98 —For the Governor General in Council' substitute 'the Central Government or the Crown Representative or by the law of Burma"

After section 100 insert the following section —

100 A The powers conferred by this Act upon the Provincial Government shall in relation to the Ranchi European Mental Hospital be powers of the Central Government '

Ranchi European Mental Hospital

XLV The Indian Majority Act, 1875

(IX of 1875)

Section 1 —For "subjects of Her Majesty" substitute 'British subjects' and for 'the dominions of Princes and States in India in alliance with Her Majesty" substitute 'all Indian States"

XLVI The Married Women's Property Act, 1874.

(III of 1874)

Section 2 —For "subjects of Her Majesty" substitute "British subjects" and for the dominions of Princes and States in India in alliance with Her Majesty" substitute "all Indian States

Section 6 —For 'Presidency" substitute "Province"

XLVII The Measures of Length Act, 1889

(II of 1889)

Section 3 —For 'Governor General in Council" substitute "Provincial Government", for town of Calcutta" substitute Province" and add at the end of the section the following proviso —

"Provided that until action is taken by the Provincial Government under this section, the copy of the Imperial standard yard approved by the Central Government before the commencement of Part III of the Government of India Act, 1935, and kept in the place within the limits of the town of Calcutta prescribed before that date by the Central Government, shall be standard for determining the length of the standard yard in each Province"

Section 5—For "under the authority of the Governor-General in Council or of a Local Government" substitute "before the first day of April, 1937 under the authority of any Government in British India, or on or after that date under the authority of the Provincial Government", and for "by order of the Governor General in Council or the Local Government' substitute "by order of the Provincial Government"

XLVIII. *The Indian Medical Degrees Act, 1916.*

(VII of 1916)

Section 3—For "Governor-General in Council' substitute "Provincial Government'

The Schedule—For "Act of the Governor General in Council" substitute 'Act of the Central Legislature"

XLIX. *The Indian Merchandise Marks Act, 1889*

(IV of 1889)

Section 16—For "in the *Gazette of India* and in local official Gazettes' substitute "in the official Gazette"

L. *The Mortgaged Estates Administration Act, 1855*

(XXIII of 1855)

Section 1—For "the territories in possession of, and under the Government of the East India Company" substitute 'British India"

LI. *The Mussalman Wakf Act, 1923.*

(XLII of 1923)

Section 6—For "Local Government" substitute "Central Government"

LII. *The Native Coinage Act, 1876*

(IX of 1876)

Omit section 2 and throughout the remainder of the Act for "native State" and 'native States" substitute "Indian State' and "Indian States"

LIII. *The Native Converts' Marriage Dissolution Act, 1266*

(XXI of 1866)

Section 3—Omit the definition of "High Court."

XIV *The Indian Naturalization Act, 1926*

(VII of 1926)

Thoughout the Act, save as otherwise provided, for "a Local Government" or 'the Local Government" or "such Local Government" substitute "the Central Government'

Section 3—In Clauses (c) and (f) of sub section (1) for "under the Government' substitute 'in India," and in clause (e) of that section for "a principal vernacular of the Province" substitute 'one of the principal vernaculars of British India"

Section 8—In sub-section (1) for the words down to "is satisfied that the certificate" substitute 'Where the Central Government is satisfied that a certificate of naturalization granted under this Act or the Indian Naturalization Act, 1852", and omit sub-section (3)

Section 13—Omit "with the previous sanction of the Governor General in Council"

After section 14 insert:—

"14A. The provisions of this Act shall, after the separation of Burma and Aden from India, continue to apply, as respects British India, to certificates granted under this Act, or the Indian Naturalization Act, 1852, before the said separation by the Local Goverments of Burma and Aden and any such certificates may after the said separation be revoked as respects British India accordingly"

Application to certificates granted before separation of Burma and Aden

LV The Indian Oaths Act, 1873.

(X of 1873)

Section 1—For "subjects of Her Majesty" substitute "British subjects" and for "the territories of Native Princes and States in alliance with Her Majesty" substitute "all Indian States"

Section 3—For "under the provisions of the Indian Councils Act, 1861, the Governor General in Council has not power to repeal" substitute "no legislature or authority in British India has power to repeal"

LVI. The Official Gazettes Act, 1863.

(XXXI of 1863.)

This Act will cease to have effect

LVII The Official Trustees Act, 1913

(II of 1913)

Section 1—For "British and Indian subjects to His Majesty in the territories of Native States in India" substitute "British subjects in Indian States"

Section 2—For paragraph (1) substitute —

"(1) 'Government' or 'the Government' means in relation to any Province the Provincial Government, and, in relation to British subjects in Indian States, the Central Government"

For paragraph (2) substitute —

(2) 'High Court' means—

(*a*) in relation to Bengal, Assam and the Andaman and Nicobor Islands, the High Court at Calcutta,

(*b*) in relation to Madras and Coorg, the Court at Madras,

(*c*) in relation to Bombay and British Baluchistan, the High Court at Bombay,

(*d*) in relation to the United Provinces and Ajmere Merwara, the High Court at Allahabad,

(*e*) in relation to the Punjab and Delhi, the High Court at Lahore;

(*f*) in relation to the Provinces of Bihar and Orissa, the High Court at Patna,

(*g*) in relation to the Central Provinces and Berar, the High Court at Nagpur,

(*h*) in relation to Sind, the Judicial Commissioner's Court,

(*i*) in relation to the North Western Province; the Judicial Commissioner's Court,

(*j*) in relation to British subjects in any Indian State, that one of the aforesaid Courts which the Central Government may from time to time notify in this behalf

Omit paragraphs (3) (5), (6) and (7)

At the end of the section insert —

"(8) 'Division' means the Province or State or group of States for which an official trustee has been appointed under this Act"

Section 3—Omit "at a Presidency town" and for "Presidency" substitute 'Division'

Section 4—For sub section (1) substitute —

"(1) The Provincial Government for each Province, and the Central Government for British subjects in any Indian State or group of Indian States shall appoint an [illegible]

[illegible] ar the appointment [illegible]

[illegible] after paragraph (*c*) insert —

"or (*d*) in the case of a Province other than Bengal, Madras or Bombay, a person already in the service of the Crown"

Omit sub section (3)

Section 6—For "Presidency" substitute 'Division'

Section 15—Omit "or of the Government of India".

LV The Indian Oaths Act, 1873.

(X of 1873)

Section 1—For "subjects of Her Majesty' substitute "British subjects and for 'the territories of Native Princes and States in alliance with Her Majesty substitute 'all Indian States"

Section 3—For 'under the provisions of the Indian Councils Act 1861, the Governor General in Council has not power to repeal' substitute 'no legislature or authority in British India has power to repeal'

LVI. The Official Gazettes Act, 1863

(XXXI of 1863,)

This Act will cease to have effect

LVII The Official Trustees Act 1913

(II of 1913)

Section 1—For 'British and Indian subjects to His Majesty in the territories of Native States in India substitute 'British subjects in Indian States

Section 2—For paragraph (1) substitute —

'(1) Government' or the Government' means in relation to any Province the Provincial Government, and, in relation to British subjects in Indian States, the Central Government"

For paragraph (2) substitute —

(2) 'High Court' means—

(*a*) in relation to Bengal Assam and the Andaman and Nicobor Islands the High Court at Calcutta

(*b*) in relation to Madras and Coorg, the Court at Madras

(*c*) in relation to Bombay and British Baluchistan, the High Court at Bombay,

(*d*) in relation to the United Provinces and Ajmere Merwara the High Court at Allahabad,

(*e*) in relation to the Punjab and Delhi the High Court at Lahore,

(*f*) in relation to the Provinces of Bihar and Orissa, the High Court at Patna,

(*g*) in relation to the Central Provinces and Berar, the High Court at Nagpur,

(*h*) in relation to Sind, the Judicial Commissioner's Court,

(*i*) in relation to the North Western Province, the Judicial Commissioner's Court,

(*j*) in relation to British subjects in any Indian State, that one of the aforesaid Courts which the Central Government may from time to time notify in this behalf"

Omit paragraphs (3) (5), (6) and (7)

At the end of the section insert —

"(8) 'Division' means the Province or State or group of States for which an official trustee has been appointed under this Act

Section 3—Omit 'at a Presidency town' and for 'Presidency' substitute 'Division'

Section 4—For sub section (1) substitute —

"(1) The Provincial Government for each Province, and the Central Government for British subjects in any Indian State or group of Indian States shall appoint an official trustee

Provided that nothing herein contained shall be deemed to bar the appointment of the same person as official trustee for two or more divisions'

In sub section (2) omit "of any of the said Presidencies and after paragraph (*c*) insert —

'or (*d*) in the case of a Province other than Bengal, Madras or Bombay, a person already in the service of the Crown'

Omit sub section (3)

Section 6—For "Presidency' substitute 'Division"

Section 15—Omit 'or of the Government of India"

Section 5—For "under the authority of the Governor-General in Council or of a Local Government" substitute "before the first day of April, 1937, under the authority of any Government in British India, or on or after that date under the authority of the Provincial Government", and for "by order of the Governor General in Council or the Local Government" substitute "by order of the Provincial Government"

XLVIII. The Indian Medical Degrees Act, 1916.

(VII of 1916)

Section 3—For "Governor-General in Council" substitute "Provincial Government"

The Schedule—For "Act of the Governor General in Council" substitute "Act of the Central Legislature."

XLIX. The Indian Merchandise Marks Act, 1889

(IV of 1889)

Section 16—For "in the *Gazette of India* and in local official Gazettes" substitute "in the official Gazette"

L The Mortgaged Estates Administration Act, 1855

(XXIII of 1855)

Section 1—For "the territories in possession of, and under the Government of the East India Company" substitute "British India"

LI. The Mussalman Wakf Act, 1923.

(XLII of 1923)

Section 6.—For "Local Government" substitute "Central Government"

LII. The Native Coinage Act, 1876

(IX of 1876)

Omit section 2 and throughout the remainder of the Act for "native State" and "native States" substitute "Indian State" and "Indian States"

LIII. The Native Converts' Marriage Dissolution Act, 1266

(XXI of 1866)

Section 3.—Omit the definition of "High Court"

XIV. The Indian Naturalization Act, 1926

(VII of 1926)

Thoughout the Act, save as otherwise provided, for "a Local Government" or "the Local Government" or "such Local Government" substitute "the Central Government"

Section 3—In Clauses (c) and (f) of sub section (1) for "under the Government" substitute "in India," and in clause (e) of that section for "a principal vernacular of the Province" substitute "one of the principal vernaculars of British India."

Section 8—In sub-section (1) for the words down to "is satisfied that the certificate" substitute "Where the Central Government is satisfied that a certificate of naturalization granted under this Act or the Indian Naturalization Act, 1852", and omit sub-section (3)

Section 13—Omit "with the previous sanction of the Governor-General in Council"

After section 14 insert:—

"14A. The provisions of this Act shall, after the separation of Burma and Aden from India, continue to apply, as respects British India, to certificates granted under this Act, or the Indian Naturalization Act, 1852, before the said separation by the Local Goverments of Burma and Aden and any such certificates may after the said separation be revoked as respects British India accordingly"

Application to certificates granted before separation of Burma and Aden

LV The Indian Oaths Act, 1873.

(X of 1873)

Section 1—For "subjects of Her Majesty" substitute "British subjects' and for 'the territories of Native Princes and States in alliance with Her Majesty" substitute "all Indian States"

Section 3—For "under the provisions of the Indian Councils Act, 1861, the Governor General in Council has not power to repeal' substitute 'no legislature or authority in British India has power to repeal"

LVI. The Official Gazettes Act, 1863.

(XXXI of 1863,)

This Act will cease to have effect

LVII The Official Trustees Act. 1913

(II of 1913)

Section 1—For "British and Indian subjects to His Majesty in the territories of Native States in India" substitute 'British subjects in Indian States"

Section 2—For paragraph (1) substitute —

"(1) *'Government' or the Government' means in relation to any Province the* Provincial Government, and, in relation to British subjects in Indian States, the Central Government"

For paragraph (2) substitute —

(2) 'High Court' means—

(*a*) in relation to Bengal, Assam and the Andaman and Nicobor Islands the High Court at Calcutta,

(*b*) in relation to Madras and Coorg, the Court at Madras,

(*c*) in relation to Bombay and British Baluchistan, the High Court at Bombay,

(*d*) in relation to the United Provinces and Ajmere Merwara, the High Court at Allahabad,

(*e*) in relation to the Punjab and Delhi, the High Court at Lahore,

(*f*) in relation to the Provinces of Bihar and Orissa, the High Court at Patna,

(*g*) in relation to the Central Provinces and Berar, the High Court at Nagpur,

(*h*) in relation to Sind, the Judicial Commissioner's Court,

(*i*) in relation to the North Western Province, the Judicial Commissioner's Court,

(*j*) in relation to British subjects in any Indian State, that one of the aforesaid Courts which the Central Government may from time to time notify in *this behalf*"

Omit paragraphs (3) (5), (6) and (7)

At the end of the section insert —

"(8) 'Division' means the Province or State or group of States for which an official trustee has been appointed under this Act'

Section 3—Omit "at a Presidency town" and for "Presidency" substitute "*Division*"

Section 4—For sub section (1) substitute —

"(1) The Provincial Government for each Province, and the Central Government for British subjects in any Indian State or group of Indian States shall appoint an [illegible]

[illegible] be deemed to bar the appointment [illegible] more divisions"

[illegible] esidencies' and alter paragraph (*c*) insert :—

"or (*d*) in the case of a Province other than Bengal, Madras or Bombay, a person already in the service of the Crown"

Omit sub-section (3)

Section 6—For "Pres dency" substitute 'Division".

Section 15—Omit '*or of the Government* of India".

Section 24 —In sub section (2) for "Secretary of State for India in Council" substitute "Government", and at the end of the sub-section insert :—

"Provided that nothing in this section affects any option afforded to a claimant by section 179 of the Government of India Act, 1935"

Omit section 31.

After section 32 insert .—

"32A The amendments of this Act which come into force on the commencement of Part III of the Government of India Act, 1935, shall not affect any legal proceedings pending in any Court on that date or be considered as automatically transferring any property from any Official Trustee to any other Official Trustee but nothing in this section shall be construed as preventing a transfer of any such property in accordance with any of the other provisions of this Act."

Saving.

LVIII The Partition Act, 1893.

Section 7 —Omit "or of the Court of Recorder of Rangoon"

LIX. The Indian Partnership Act, 1932

(IX of 1932)

Section 56 —For "Governor General in Council" substitute "Provincial Government of any province" and for "any Province" substitute" "that Province."

Section 58 —In sub-section (3) for 'the Government of India or a Local Government" substitute 'the *Central Government, or any Provincial Government or* the Crown Representative"; for "when the Governor-General in Council' substitute "when the Provincial Government" and omit 'under the hand of one of the Secretaries to the Government of India."

Section 71 —For "Governor General in Council' substitute "Provincial Government' and in sub section (2) after "may" insert "also."

LX. The Indian Patents and Designs Act 1911.

(II of 1911)

Section 2 —For paragraph (1) substitute :—

"(1) 'Advocate-General' means an Advocate General appointed under the Government of India Act, 1935"

Section 21A —In sub sections (1) and (2) for "Secretary of State for India in Council' substitute "Central Government"

Section 72.—For "the Governor of Fort St George in Council, the Governor of Bombay in Council, the Lieutenant Governor of Burma" substitute "the Provincial Governments of Madras and Bombay"

LXI The Pensions Act, 1871.

(XXIII of 1871)

After section 3 insert —

"3A. The expression 'the appropriate Government' means, in relation to federal pensions, the Central Government, and in relation to other pensions, the Provincial Government"

Definition.

Sections 5 and 10 —For "Local Government" substitute "appropriate Government".

Section 11.—At the end insert —

"*This section applies in British India also to pensions granted or continued, after* the separation of Burma and India, by the Government of Burma"

Section 13 —For "Local Government' substitute "appropriate Government."

Section 14 —At the beginning insert : "*In* each Province" and for "Local Government' substitute 'appropriate Government"

LXII. The Presidency Small Cause Courts Act, 1882.

(XV of 1882)

For section 7 substitute —

"7. There shall be appointed from time to time a Chief Judge of the Small Cause Court and as many other Judges as the Provincial Government thinks fit"

Appointment of Judges.

Section 8A.—For "the qualifications required by section 7" substitute "the requisite qualifications"

For section 13 substitute :—

"13 There shall be appointed an officer to be called the Registrar of the Court who shall be the chief ministerial officer of the Court; there shall also be appointed a Deputy Registrar and as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the [illegible]

Appointment of Registrar and other officers

time, by rule direct

Section 19 —For paragraph (6) substitute —

(b) Suits concerning any act done by or by orders of the Central Government, the Crown Representative or the Provincial Government"

For section 51 substitute :—

51 Four or more persons shall be appointed bailiffs and appraisers for the purposes of this chapter.

Appointment of bailiffs and appraisers

Section 52 —Omit from "shall give security" to "and they"

Section 63 —Omit the second paragraph.

Omit section 78

Section 93 —Omit "and the members of their respective Councils"

LXIII The Presidency Towns Insolvency Act, 1909.

(III of 1909)

Long title —Omit "and the town of Rangoon"

Preamble —For "towns of Rangoon and" substitute "town of"

Section 3 —For "Bombay and Rangoon" substitute "and Bombay"

Sections 20 and 23 —Omit "in the *Gazette of India* and"

Section 60 —For "His Majesty's Royal Indian Marine Service" substitute "the Royal Indian Navy"

Section 77 —In sub section (1) for "Bombay and Rangoon" substitute "and Bombay", in sub section (3) omit "and in the Chief Court of Lower Burma under that Act as applied by the Lower Burma Courts Act, 1900," and "and in the Chief Court of Lower Burma", and at the end of the section insert —

"(4) On and after the first day of April nineteen hundred and thirty seven the powers conferred by this section on the Chief Justice of the High Court at Bombay and on the Judicial Commissioner of Sind shall be powers of the Provincial Government of Bombay and of the Provincial Government of Sind respectively"

Section 113 —Substitute the following section —

113 Rules made under the provisions of this Part shall be subject to the previous sanction of the Provincial Government

Sanction to rules

Section 4 —Omit "in the *Gazette of India* or" and "as the case may be"

Sections 122 and 123 —For "the Government of India" and "the Governor-General in Council" substitute "the Provincial Government"

LXIV The Press and Registration Books Act, 1867.

(XXV of 1867.)

Section 1 —Omit the definitions of "British India" and "Local Government"

Section 17 —Omit the second paragraph

Section 21 —For "the Governor General in Council or the Local Government may by notification in the *Gazette of India* or the local Gazette as the case may be," substitute "the Provincial Government may, by notification in the official Gazette

LXV The Provident Funds Act 1925.

(XIX of 1925)

Section 2 —In clause *(d)* for "the Government substitute "the Secretary of State, the Central Government, the Crown Representative or any Provincial Government", and at the end of the clause insert "and references in this Act to the Government shall be construed accordingly"

For clause *(f)* substitute —

"*(f)* "Railway administration" means—

(i) any company administering a railway or tramway in British India either under a special Act of Parliament or an Indian law, or under contract with the Crown or

(ii) the manager of any railway or tramway administered by the Federal Railway Authority or by a Provincial Government,

and includes in any case referred to in sub clause *(ii)*, the Federal Railway Authority or the Provincial Government, as the case may be""

Section 8 —For "Local Government" and "Governor General in Council" substitute "appropriate Government"

[illegible] -ans— [illegible] -ority for a major port, and [illegible] to the Central Government to fall within List I in the seventh Schedule to the Government of India Act, 1935, the Central Government and

(b) in other cases, the Provincial Government

Explanation —"The Provincial Government" in relation to an institution registered under the Societies Registration Act 1860 means the Provincial Government of the Province in which the Society is registered"

LXVI The Provident Insurance Societies Act, 1912

(V of 1912)

Throughout the Act for "Local Government" substitute "Central Government"

LXVII The Provincial Insolvency Act, 1920

(V of 1920)

Long Title —For "Rangoon" substitute "Karachi"

Preamble —For "the towns of Rangoon and Karachi" substitute "the town of Karachi"

Section 2 —Omit "the town of Rangoon"

Section 79 —For sub section (1) substitute —

"(1) The High Court may, with previous sanction of the Provincial Government make rules for carrying into effect the provisions of this Act"

In sub section 13 omit "in the *Gazette of India* or" and "as the case may be"

LXVIII The Provincial Small Cause Courts Act, 1887

(IX of 1887)

For section 6 substitute —

"6 When a Court of Small Causes has been established there shall be appointed by order in writing, a Judge of the Court

Judge

Provided that if the Provincial Government so direct, the same person shall be the Judge of more than one such Court

Section 8 —For sub section (1) substitute —

"(1) If the Provincial Government so direct there may be appointed, by order in writing additional Judges of a Court of Small Causes or of two or more such Courts"

Om t sect on 9

ite —

Small Causes an officer to be called the Registrar of the Court

Omit sub section (5)

Omit section 13

Section 31 —In sub sect on (1) for the Local Government from appo nting substitute the appointment of

The Second Schedule —For paragraph (1) substitute —

(1) a suit concerning any act done or purporting to be done by or by order of the Central Government, the Crown Representative or the Provincial Government

LXIX The Public Servants (Inquiries) Act, 1850

(XXXVII of 1850)

Section 2 —For shall" where it occurs for the second and third times substitute 'may"

For section 23 substitute —

'23 In this Act the Government' means the Central Government in the case of persons employed under the Government and the Provincial Government in the case of persons emyloyed under that Government

Definition of Government

LXX The Indian Railways Act, 1890.

(IX of 1890)

Section 3 —After paragraph (18) insert —

(19) Federal Railway Indian State Railway' and minor Railway' have the meanings respectively assigned to them in the Government of India Act 1935 except that they do not in any provisions of this Act include any tramway unless that provision has been extended under section 146 of this Act to that tramway"

(20) Government where the context so requires means the Federal Railway Authority

Sections 4 and 5 —For Governor General in Council" substitute safety controlling authority

Section 7 —For Governor General in Council" substitute general controlling authority"

After sect on 8 insert —

8A Nothing in the two last preced ng sections shall authorise the doing of anything on or to any works lands buildings vested in or in possession of His Majesty for the proposes of the Central Government without the consent of that Government or the doing of anything on or to any works lands or buildings vested in or in the possess on of His Majesty for the purposes of a Province without the consent of the Provincial Government"

Protection for Government property

Section 9 —For Governor General in Council" substitute safety controlling authority

Section 10 —In sub section (1) for "the three last foregoing sections" substitute "the foregoing provisions of this chapter"

Section 11 —For "Governor General in Council" substitute "Provincial Government"

Section 12 —For "Governor General in Council" substitute "general controlling authority"

Sections 13 to 25 —For "Governor General in Council" substitute "safety controlling authority"

Omit sections 26 to 40

Section 41 —Omit "or of any order made thereunder by the Commissioners or by a High Court"

Section 42 —Omit sub section (2) and in sub section (3) for "as aforesaid" substitute "as is referred to in section 42A"

In sub section (4) substitute for proviso (d) —

"(d) If an objection to the rate apportionment or route has been sent within the prescribed period, the Federal Railway Authority shall on the request of any of the railway administrations, decide the matter"

In proviso (e) to that sub section for "the Commissioners" substitute "the Federal Railway Authority"

In proviso (f) to that sub section omit "and the case has been referred to the Commissioners" and for "of the Commissioners" and "until the Commissioners" substitute "of the Federal Railway Authority" and "until the Federal Railway Authority"

In the remainder of that sub section for "Commissioners" and "Governor General in Council" substitute "Federal Railway Authority"

At the end of the section insert —

"(5) The powers conferred by this section on the Federal Railway Authority shall in relation to any dispute between two or more minor railways be powers of the Provincial Government"

After section 42 insert —

42A (1) A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway administration or any particular description of traffic in respect whatsoever, or subject to any particular person or railway administration or any particular descriptions of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever

Prohibition of undue preference

(2) Any complaint that a railway administration is contravening the provisions of this section shall be determined by the general controlling authority

Section 43 — For "Commissioners" substitute "General controlling authority"

Section 46 —For sub section (1) substitute —

" [illegible] all decide any question or dispute which [illegible] charged by a railway administration" substitute "appropriate authority"

" [illegible] authority means in relation to a Federal [illegible] Federal Railway Authority and in relation to a minor railway the Provincial Government

After section 46 insert —

46A Any decision given by the Federal Railway Authority the general controlling authority or the Provincial Government in accordance with the provisions of this chapter shall be final and [illegible]

Decisions in accordance with this chapter shall be binding

Saving for functions of Railway Rates of Committees and Railway Tribunal

Section 47 —In sub section (1) for "Governor General in Council" substitute "general controlling authority", In sub-section (3) for "the Governor General in

Council" substitute 'the general controlling authority and the safety controlling authority' and after provided that insert —

"(a) Where the safety controlling authority is not the same as the general controlling authority the safety controlling authority shall not refuse its sanction unless it appears to it to be necessary so to do for the purpose of securing safety, and,'

(b) For sub section (4) substitute —

(4) The safety controlling authority or with the sanction of that authority the general controlling authority may cancel any rule made under this section and the company or officer required by sub section (1) to make rules thereunder may at any time with the previous sanction of those authorities rescind or vary any such rule

Provided that where the safety controlling authority is not the same as the general controlling authority the safety controlling authority shall not cancel any rule or refuse its sanction to the concellation rescinding or variation of any rule unless it appears to it to be necessary so to do for the purpose of securing safety

Section 48 —For Governor General in Council substitute safety controlling authority

Section 49 —For Governor General in Council substitute 'any general controlling authority

Section 50 —For Governor General in Council substitute Federal Railway Authority

Section 51 —For the first *Governor General in Council* substitute *general* controlling authority and for the second Governor General in Council substitute "Provincial Government

Section 51A —For sub section (2) substitute —

(2) The scheme shall be submitted to the general controlling authority which may sanction it subject to such modifications and conditions as it may prescribe

In sub section (5) for the words from Governor General in Council to concerned substitute general controlling authority

Section 52 —For Governor General in Council substitute general controlling authority

Section 53 —For Governor General in Council substitute safety controlling authority

Sections 54 and 55 —For Governor General in Council substitute Federal Railway Authority

Secton 62 —For Governor General in Council substitute safety controlling authority

Section 63 —For Governor General in Council substitute general controlling authority

Section 72 —For Governor General in Council substitute Federal Railway Authority

Sections 83 to 85 —For Governor General in Council substitute safety controlling authority

Sections 87 and 83 —For Government substitute safety controlling authority

Section 89 —Omit section 47 sub section (6) and for Government substitute "Federal Railway Authority

Section 90 —After general rules insert "and the keeping thereof open to inspection , for Government substitute general controlling authority and at the end of this section insert —

"Provided that where the safety controlling authority is different from the general controlling authority, the safety controlling authority may take proceedings for the recovery of the said penalty if in the opinion of the safety controlling authority the default is a default which relates to safety

Section 91 —For Governor General in Council and "Government " substitute "safety controlling authority

Section 92—For 'Government substitute 'authority to which the return should have been submitted'

Section 93—For Government' substitute appropriate authority and at the end of the section insert —

In this section 'the appropriate authority means in relation to a contravention with respect to the maximum load to be carried in any waggon or truck the safety controlling authority and in relation to any other contravention the general controlling authority

Section 94—For 'Governor General in Council and Government substitute 'safety controlling authority

Section 95—For 'Government" substitute "general controlling authority"

Section 96—For 'Government' substitute 'safety controlling authority"

Section 97—In sub section (1) omit 'to the Government" and for sub sections (2) and (3) substitute —

"(2) Nothing in this chapter shall be construed as requiring any authority to recover any penalty in any case in which it thinks it proper to refrain from so doing '

Section 98—For Government" substitute 'appropriate authority"

Section 135—For 'Governor General in Council" substitute 'general controlling authority"

Section 136—For 'Governor General in Council substitute 'safety controlling authority'

Omit section 139

Section 143—For "Governor General in Council' substitute 'authority making cancelling, rescinding or varying the rule ; and omit sub section (3)

Omit section 144

For section 146 substitute —

Power to extend Act to certain tramways

146 (1) This Act or any portion thereof may be extended by notification in the official Gazette :—

(a) to any tramway which is a Federal Railway within the meaning of the Government of India Act, 1935, by the Federal Railway Authority, and

(b) to any other tramway, by the Provincial Government

(2) This section does not apply to any tramway not worked by steam or other mechanical power

Section 147—Substitute the following section —

'147 [illegible] the sanction of the safety [illegible] notification in the official [illegible] railway from any provisions of [illegible] this Act

Power to [illegible] from Act

Provided that the safety controlling authority shall not refuse its sanction unless it appears to it necessary so to do for the purpose of securing safety

The Second Schedule—In paragraph (3) for "Governor General in Council substitute 'Federal Railway Authority"

LXXI The Indian Registration Act, 1908 (XVI of 1908)

Section 3—In sub section (2) for "under Government" substitute "under the Crown

Omit section 4

Section 6—Omit the proviso

Section 13—In sub section (1) omit all appointments, made by the Inspector General under section 6 and omit sub section (3)

Section 14—Omit sub-section 1

Section 17—In paragraph (vii) of sub section (2) for "Government" substitute the Crown'

Section 83—In sub section (1) omit the Branch Inspector General of Sind"

Omit section 92

LXXII. The Religious Endowments Act, 1863
(XX of 1863)

For section 24 substitute —

24 The word 'India' in this Act shall mean British India"

LXXIII The Bengal Land Revenue Sales Act, 1859
(XI of 1859)

Section 8—For the first "Government" substitute "the Provincial Government," and for the second "Government' substitute the Crown '

Section 14—For "Government ' substitute "the Provincial Government'

Section 15—For "the Government" substitute "the Provincial Government"

Section 32—For 'the Government substitute 'the Provincial Government"

Section 35—For "Government' substitute "the Provincial Government"

Section 50—For "by Government' substitute "by the Provincial Government'

Section 52—For 'Regulations of Government' substitute law for the time being in force"

Section 58—For "Government substitute "Provincial Government '

Section 60 and 61—For Government substitute 'the Provincial Government"

LXXIV The Indian Securities Act, 1920,
(X of 1920)

Section 2—At the end insert —

"(c) 'the Government' or 'Government' in relation to any loan or security, means the Government raising the loan or issuing the security

Sections 6, 7 and 9—For "Governor General in Council" substitute 'Government"

Section 13—For "Local Government" substitute "Government '

Section 24—For "Governor General in Council" substitute "Government'

After section 25 insert —

"26 For the avoidance of doubt it is hereby declared that the rights of all persons in relation to the Indian securities are to be determined, in connection with all such questions as are dealt with by this Act in relation to Government securities, by the law of British India"

Provision as to Indian securities

LXXV The Societies Registration Act, 1860
(XXI of 1860)

Section 3—For 'the Governor General of India in Council and 'Government substitute 'the Provincial Government

Section 13—For "whenever the Government substitute 'whenever any Government," and for "without the consent of Government substitute 'without the consent of the Government of the Province of registration

LXXVI The Special Marriage Act, 1872
(III of 1872)

Section 5—For 'Government substitute 'Provincial Government

LXXVII Specific Relief Act, 1877.
(I of 1877)

Section 9—For 'the Government substitute 'the Secretary of State, the Central Government, the Crown Representative or any Provincial Government"

Section 45—For 'Fort William Madras Bombay and Rangoon" substitute 'Calcutta, Madras and Bombay", and for paragraph (f) substitute —

'(f) to make any order binding on the Secretary of State the Central Government, the Crown Representative or any Provincial Government"

Section 56—For 'the Government of India or the Local Government" substitute "the Central Government, the Crown Representative or any Provincial Government"

LXXVIII The Indian Stamp Act, 1899
(II of 1899)

Section 2 —Omit sub section (8)

In clause (b) of sub section (9) for the Local Government" substitute "the Collecting Government"

After sub section (12) insert —

"(12 A) 'Collecting Government' means —

(a) in relation to stamp duty in respect of bills of exchange, cheques promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts, and in relation to any other stamp duty chargeable under this Act and falling within item 59 in List I in the Seventh Schedule to the Government of India Act 1935, the Central Government,

(b) save as aforesaid, the Provincial Government"

Section 3 —For 'Government substitute Crown"

Section 9 —For the Governor General in Council" substitute 'the Collecting Government and for "British India" substitute the territories under its administration'

Sections 10, 16 and 18 —For 'Governor General in Council' substitute 'collecting Government"

Section 26 —For "the Secretary of State in Council and "the said Secretary of State in Council' substitute "the Crown"

Section 33 —In sub section (3) for 'the Governor General in Council" and 'the Local Government" the Collecting Government'

Section 35 —In proviso (e) for "the Government substitute 'the Crown"

Section 37 —For 'the Governor General in Council" substitute 'the Collecting Government"

Section 49 —For 'the Local Government" substitute 'the Collecting Government"

Section 55 —For "Governor General in Council substitute 'Provincial Government"

Section 57 —In sub section (1) for paragraphs (a) to (e) substitute —

'(a) if the case arises in the Province of Madras or in Coorg, to the High Court in Madras,

(b) if it arises in the Provi [illegible] Bombay,

(c) if it arises in Sind to th [illegible]

(d) if it arises in Agra and [illegible] t at Allahabad,

(e) if it arises in Oudh, to [illegible]

(f) if it arises in Behar and Orissa to the High Court at Patna,

(g) if it arises in the Punjab, the North West Frontier Province British Baluchistan or Delhi, to the High Court at Lahore,

(h) if it arises in the Central Provinces and Berar, to the High Court at Naghpur, and

(i) if it arises in any other part of British India, to the High Court at Calcutta,'

In sub section (2) for 'or Chief Court' substitute 'Chief Court or Judicial Commissioner's Court'

Sections 58 59 and 60 —For "or Chief Court' substitute Chief Court or Judicial Commissioner s Court

Section 70 —For the Local Government' substitute "the Collecting Government'

Section 74 —For 'Local Government substitute 'Collecting Government" and omit subject to the control of the Governor General in Council

Section 75 —For Governor General in Council" substitute 'Collecting Government'

Section 76 —For sub section (1) substitute —

'(1) All rules made under this Act shall be published in the official Gazette"

Section 76A For "the Local Government may by notification in the local official Gazette substitute "the Central Government, subject to the provision of

section 124 (1) of the Government of India Act, 1935 and the Provincial Government may by notification in the official Gazette'

Schedule 1 Item 35—Omit exemption (b)

Item 53—In exemptions (a) and (f) for 'Government substitute "Crown"

Item 57—In exemption (c) for 'Governor of Bombay in Council" substitute "Provincial Government', and in exemption (e) for 'Government substitute "the Crown'

Item 58A—Omit exemption (b)

LXXIX The Indian Succession Act 1925
(XXXIX of 1925)

Sections 223 and 236—For "Governor General in Council' substitute 'Provincial Government'

Section 264—Omit "and the Province of Burma"

Section 273—At the end of the section insert —

"The proviso to this section shall apply to British India after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date"

Section 300—Omit "and the Province of Burma

Section 370—In clause (e) for sub section (2) for "Governor General in Council substitute "Provincial Government

Section 380—At the end of the section insert —

'This section shall apply in British India after the separation of Burma and Aden from India to certificates granted in Burma and Aden before the date of the separation or after that date in proceedings which were pending at that date'

LXXX The Suits Valuation Act 1887
(VII of 1887)

Section 2—For 'Governor General in Council" substitute 'Provincial Government"

Section 3—Omit "subject to the control of the Governor General in Council

LXXXI The Indian Tolls Act 1851
(VIII of 1851)

Before section 2 insert —

"1A This Act extends to the territories administered on the fourth of July eighteen hundred and fifty one by the Governor of the Presidency of Fort William in Bengal, the Lieutenant Governor of North Western Provinces of Bengal and the Governor of the Presidency of Fort St George in Council"

Extent

Section 2—For the words from the beginning to 'Fort St George in Council" substitute the Provincial Government and for at the expense of the Government" substitute at the expense of the Central or any Provincial Government"

Section 8—Omit all the words after public revenue"

LXXXII The Indian Tolls Act 1929
(XV of 1864)

Omit section 4

LXXXIII The Trade Disputes Act 1912
(VII of 1929)

Section 2—In clause (c) for 'the Government" substitute any Government in British India.

After clause (c) insert —

'(cc) Federal Railway has the same meaning as in the Government of India Act 1935

In clause (g) for "the Governor General in Council substitute in the case of a Federal Railway, the Central Government, and in the case of any other railway, the Provincial Government,

Section 3 —For 'Governor General in Council' substitute "Provincial Government' and after 'the diseases which and "apply' insert 'within the Province'

Section 16 —For Governor Gereral in Council' substitute 'Provincial Government"

Section 21 —In subsection (2) for 'the Governor General in Council" substitute "the Provincial Government of that Province'

Section 32 —*In sub section (1) for* Governor General in Council" substitute 'Provincial Government"

), omit clause (1), insert, and at the end of clause

substitute 'section 32"

In sub section (3) omit "the *Gazette of India* or' and as the case may be"

XCIV. The Payment of Wages Act, 1936

(IV of 1936)

Section 2 —In paragraph (vi) (*a*) leave out "Governor General in Council or"

Section 5 —"*For Governor General in Council substitute 'Provincial Government.*"

Section 7 —In sub section (2) (e) omit Governor General in Council or"

Section 11 —Omit the Governor General in Council or

Section 14 —For Governor General in Council substitute 'Provincial Government'

Section 17 —Omit "or in Rangoon"

For section 24 substitute —

"24 The powers by this Act conferred upon the Provincial Government shall, in relation to Federal Railways (within the meaning of the Government of India *Act*, 1935) mines and oilfields, be powers of the Central Government'

Application of Act to Federal Railways mines and oilfields

Secton 26 — In sub section (1) *for* 'Governor General in Council' substitute "Provincial Government" and in sub section (2) omit subject to the Control of the Governor General in Council'

ADDITION AND AMENDMENTS BY ACTS OF 1937.

THE INDIAN INCOME TAX (AMENDMENT) ACT, 1937.

(IV OF 1937.)

Received the assent of the Governor General in Council on the 4th March, 1937

Whereas it is expedient further to amend the Indian Income tax Act, 1922, for the purposes hereinafter appearing, It is hereby enacted as follows —

Short title

1 This Act may be called the Indian Income tax (Amendment) Act, 1937.

Amendment of section 16, Act XI of 1922

2 To section 16 of the Indian Income tax Act, 1922, (hereinafter referred to as the said Act), the following sub section shall be added, namely —

"(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

(*a*) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(*i*) from the membership of the wife in a firm of which her husband is a partner,

(*ii*) *from the admission of the minor to the benefits of partnership* in a firm of which such individual is a partner;

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart, or

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual, and

(b) so much of the income of any association of individuals consisting of such individual and his wife as arises from assets transferred by such individual"

Amendment of section 18, Act XI of 1922

3 To sub section (5) of section 18 of the said Act the following proviso shall be added namely —

"Provided further that where such person or owner is a person whose income is included under the provisions of sub section (3) of section 16 in the total income of another person that person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year"

Amendment of section 48, Act XI of 1922

4 After sub section (3) of section 48 of the said Act the following sub section shall be inserted, namely —

"(3A) Where the share holder referred to in sub section (1), or the member of a registered firm or the minor admitted to the benefits of partnership referred to in sub section (2), or the owner of a security referred to in sub section (3) is a person whose income is included under the provisions of sub section (3) of section 16 in the total income of another person of the provisions of sub-sections (1), (2) and (3) shall apply as if that person were himself the persons entitled to a refund under those sub sections"

Operation of section 2

5 The amendment made in the said Act by section 2 shall not have effect in respect of any income chargeable to income tax for any year ending before the first day of April, 1937

THE WORKMEN'S COMPENSATION (AMENDMENT) ACT, 1937

ACT NO VII OF 1937

Received the assent of the Governor General in Council on the 4th March, 1937

An Act further to amend the Workmen's Compensation Act, 1923, for a certain purpose

Whereas it is expedient further to amend the Workmen's Compensation Act, 1923, for the purpose hereinafter appearing It is hereby enacted as follows —

Short title

1 This Act may be called the Workmen's Compensation (Amendment) Act 1937

2 (1) *Section 35 of the Workmen's Compensation Act 1923, shall be* renumbered as sub-section (1) of that section and in the said section as so renumbered—

Amendment of section 35, Act VIII of 1923

(a) for the words "paid to" the words "deposited with" shall be substituted,

(b) for the words "for the benefit of" where they occur for the first time, the words "which has been awarded to or may be due to" shall be substituted;

(c) one member holding office for a period of three years to be nominated alternately by the Local Government of Delhi and the Local Government of Ajmer Merwara,

(d) one member to be nominated by the Chief Commissioner of Railways and

(e) one member to be nominated by the Chief Inspector of Mines

(3) Any vacancy occuring in the Board otherwise than by the expiry of the time of office of the member referred to in clause (c) of sub section (2) shall be filed as soon as may be by a nomination made by the authority by whom the member vacating office was nominated

(4) The Board shall have full power to regulate by bye laws or otherwise its own procedure and the conduct of all business to be transacted by it

(5) The powers of the Central Electricity Board may be exercised notwithstanding any vacancy in the Board '

Amendment of section 37 Act IX of 1910

4 In section 37 of the said Act for the words "Governor General in Council in both places were they occur, the words ' Central Electricity Board ' shall be substituted

Amendment of section 38, Act IX of 1910

5 In Section 38 of the said Act,—(a) sub section (3) shall be omitted, and (b) sub section(4) shall be re nuembered as sub section (3)

(IV) THE CONTEMPT OF COURTS (AMENDMENT) ACT, 1937

ACT NO XII OF 1937

Received the assent of G G on the 10th March 1937

An Act farther to amend the Contempt of Co irts Act, 1926 for a certain purpose

WHEREAS it is expedient to amend the Contempt of Courts Act, 1926, for the purpose hereinafter appearing, It is hereby enacted as follows —

Short title

1 This Act may be called the Contempt of Courts (Amendment) Act, 1937

Amendment of preamble to Act XII of 1926

2 In the preamble to the Contempt of Courts Act 1926 (hereinafter referred to as the said Act) the word subordinate shall be omitted

Amendment of section 3 of Act XII of 1926

3 To section 3 of the said Act the following proviso shall be added, namely —

"Provided further that notwithstanding anything elsewhere contained in any law no Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it"

(V) THE HINDU WOMEN S RIGHTS TO PROPERTY ACT, 1937

ACT NO XVIII OF 1937

Received the assent of the Governor General on the 14th April, 1937

Whereas it is expedient to amend the Hindu law to give better rights to women in respect of property, It is hereby enacted as follows —

Short title and extent

1 (1) This Act may be called the Hindu Women s Rights to property Act, 1937

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas but excluding Burma

Application

2 Notwithstanding any rule of Hindu law or custom to the contrary, the provisions of section 3 shall apply where a Hindu dies intestate leaving a widow

Devolution of property

3. (1) When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate his property, and when a Hindu governed by any other School of Hindu Law or by customary law dies intestate leaving separate property that separate property shall, subject to the provisions of sub section (3) devolve upon his widow along with his lineal descendants, if any, in like manner as it devolves upon a son

Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such pre deceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son.

Provided further that the same provision shall apply *mutatis mutandis* to the widow of a predeceased son of a predeceased son

(2) When a Hindu governed by any School of Hindu Law other than the Dayabhaga School or by customary law dies intestate having at the time of his death an interest in the Hindu joint family property, his widow shall, subject to the provisions of sub section (3) have in the property the same interest as he himself had

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession descends to a single heir or to any property to which the Indian Succession Act, 1925, applies

Saving

4 Nothing in this Act shall apply to the property of any Hindu dying intestate before the commencement of this Act

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[N B.—*To replace the pages of the Volume containing the Life Assurance Companies Act and the Provident Insurance Societies Act*]

THE INSURANCE ACT, 1938

ACT NO IV OF 1938

An Act to consolidate and amend the law relating to the business of Insurance

Received the assent of the Governor General on the 26th February, 1938

WHEREAS it is expedient to consolidate and amend the law relating to the business of insurance, It is hereby enacted as follows —

India by external companies

"2 The marked increase in the volume of life insurance business and the development of other forms of insurance business in British India since 1912 soon suggested that more comprehensive legislation was needed A Bill was prepared in 1925 to extend to other classes of insurance business the supervision already exercised over life insurance The appointment in England almost simultaneously of a departmental committee presided over by Mr A C Clauson K C to report on the amendment of the Assurance Companies Act 1909 on which the Indian Act VI of 1912 had been largely based, decided the Government of India to postpone that Bill and await the legislation resulting from the Clauson enquiry The enquiry however though completed in 1927,

"3 In 1935 the Government decided to proceed with the reform of Insurance law without waiting for the enactment of legislation in England Mr S C Sen was placed on special duty to examine the material which had been collected concerning the amendment of company law in general and insurance law in particular In 1936 the Indian Companies (Amendment) Act 1936 was passed The project of revising the law of insurance was at once taken up The small advisory committee of experts representing various interests was assembled in autumn of 1936 to consider in detail the various recommendations contained in Mr Sen s report The Bill embodies the proposals which Government has decided to submit to the Legislature after consideration of Mr Sen s recommendations and the opinions of the advisory committee

"4 The draft Bill includes in one enactment the subjects dealt with by the two separate Acts of 1912 but relegates the provisions relating to Provident Insurance Societies to a separate part —*Statement of Objects and Reasons*

Scope and Object — It provides *inter alia* for the following matters It increases the supervision exercised over all concerns transacting insurance business of whatever kind in British India whether these are indigenous concerns or external companies represented in India by branches or agencies and treats agents acting for Lloyd s underwriters on the same basis as such branches or agencies Registration formerly unnecessary except for Provident Insurance Societies is proposed for general application and the principle of exacting deposits hitherto applied only to indigenous companies transacting life insurance business has been similarly extended The amount of deposit has been increased with the object of more effectively discouraging the formation of companies inadequately financed and where the business of life insurance is to be carried on a minimum net sum of Rs 50 000 is required as working capital Provision is made for full disclosure of the information required to ensure sound principles of finance

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checked Certain restrictions are imposed on the investment of the funds of insurance companies, and external companies are required to keep a portion of their assets invested in Indian Government securities. The existing provisions of the law relating to winding up of insurance companies, and to the amalgamation and transfer of insurance business have been enlarged Provisions have been inserted to regulate the assignment and transfer of policies of life insurance and in making of nominations Power is given to companies to pay into Court monies due under a policy where there is difficulty in securing a proper discharge. It is proposed to prohibit the employment of managing agents in future, and to bring existing Managing Agencies to an early end In order to secure fair treatment for Indian insurance companies operating in foreign countries power is taken to subject the nationals of a foreign country to any restrictions that are imposed in that country on In[illegible] are put forward arrived at [illegible] commission These include [illegible] administration of the Act [illegible] who will normally be the Gov[illegible] of Provident Insurance Societ[illegible]

Provident Insurance Societies—"The provisions relating to Provident Insurance Societies subject these to much more effective supervision than has hitherto been exercised The name adopted by any such society will indicate its status Business on the dividing principle is prohibited so that societies dependent on this class of business will disappear A minimum initial working capital is required, and the principle of deposits is applied All schemes of insurance operated by a society are to be subjected to acturial examination so that unsound schemes may be eliminated, and periodical acturial investigation must be made into the financial condition of the society Proper books of account must be maintained, and the accounts must be audited Separate class of [illegible] und must be maintained [illegible] are further protected by a certain percentage of the [illegible] Other features of this Part [illegible] the provisions governing [illegible] minations Liquidation [illegible] overnment, is now to be [illegible]

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Insurance Act, 1938.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "actuary" means an actuary possessing such qualifications as may be prescribed ;

Notes—"The definition of 'actuary' enables the Governor General in Council to [illegible] made under [illegible]

"3 (1) Any person who, as an actuary, investigates the financial condition of a company, signs valuation returns of a company, or reports on any proposed amalgamation or transfer in conformity with clause (b) of sub section (2) of section 20 of the Act, shall be either—

(a) a Fellow of the Institute of Actuaries, London, or a Fellow of the Faculty of Actuaries in Scotland , or

(*b*) where application is made by a company and where, in the opinion of the Governor General in Council, special circumstances exist —

(i) an associate of such Institute of Actuaries or of such Faculty of Actuaries, or

(ii) such other person having actuarial knowledge as the Governor General in Council may authorize to be employed to perform the duties of an actuary.

(2) Every application by a company for permission to employ as an Actuary any person other than a Fellow of the Institute or Faculty of Actuaries shall state the work for the performance of which such person is required, and the Governor General in Council if he grants the application, shall cause a certificate to be issued to the company permitting, subject to such conditions and restrictions as he thinks fit, the employment of a person mentioned in the application" —*Vide* Notification No 86 I (17) dated the 3rd May, 1930

(2) "policy-holder" includes the person who is the absolute assignee of the benefits under the policy;

(3) "approved securities" means Government securities, and any other security charged on the revenues of the Central Government or of a Provincial Government, or guaranteed fully as regards principal and interest by the Secretary of State in Council or the Secretary of State or the Central Government or a Provincial Government; and any debenture or other security for money issued under the authority of any Act of a Legislature established in British India by or on behalf of a port trust or municipal corporation or city improvement trust in any Presidency-town, or by or on behalf of the trustees of the port of Karachi,

(4) "auditor" means a person qualified under the provisions of section 144 of the Indian Companies Act,* 1913, to act as an auditor of companies;

Notes —Section 144 of the Indian Companies Act enacts —

[illegible] as an auditor of any company other [illegible] company of a public company unless [illegible] Council entitling him to act as an [illegible]

"Provided that a firm whereof all the partners practising in India hold such certificates may be appointed by its firm name to be auditor of a company, and may act in its firm name

"(2) The Governor General in Council may, by notification in the Gazette of India and after previous publication, make rules providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant, renewal or cancellation

"Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant"

(5) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer means certified by a principal officer of the insurer to be a true copy or a correct translation, as the case may be,

(6) "Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction,

(7) "Government securities" means Government securities as defined in the Indian Securities Act, 1920,†

(8) "insurance company" means any insurer being a company, association or partnership which may be wound up under the Indian Companies Act, 1913,* or to which the Indian Partnership Act, 1932,‡ applies,

Notes —This definition is inserted for the purposes of the winding up provisions *vide* sections 53 to 61 —*Notes on Clauses*

* VII of 1913. † X of 1920 ‡ IX of 1932.

(9) "insurer" means—

(*a*) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than British India, carrying on insurance business [not being a person specified in sub-clause (*c*) of this clause] which—

(*i*) carries on that business in British India, or

(*ii*) has his or its principal place of business or is domiciled in British India,

(*b*) any body corporate [not being a person specified in sub-claause (*c*) of this clause] carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in British India, or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913,* as defined by sub-section (*2*) of section 2 of that Act,

and

(*c*) any person who in British India has a standing contract with underwriters who are members of the Society of Lloyd's whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters,

but does not include an insurance agent licensed under section 42 or a provident society to which the provisions of Part III apply,

[illegible]

and (ii) of sub-clause (*a*) are Indian insurers —*Notes on Clauses*

(10) "insurance agent" means an insurance agent licensed under section 42 being an individual who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business;

(11) "life insurance business" includes annuity business, that is to say, the business of effecting contracts of insurance for the granting of annuities on human life and, if so provided in the contact of insurance, disability and double indemnity accident benefits,

Notes —*Vide Nelson* v *Board of Trade* 84 L T 565=65 J P 487 *British Union and National Insurance* (1914), 2 Ch 77=83 L J Ch 596 *Re Profits and Income Insurance* (1929) 1 Ch 262

(12) "manager" and "officer" have the meanings assigned to those expressions in clauses (*9*) and (*11*) respectively of section 2 of the Indian Companies Act, 1913,*

(13) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called

* VII of 1913

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of section 32 of this Act ;

(14) "prescribed" means prescribed by rules made under section 114 , and

(15) "Superintendent of Insurance' means the officer, who shall be a qualified actuary, appointed by the Central Government to perform the duties of the Superintendent of Insurance under this Act

PART II

PROVISIONS APPLICABLE TO INSURERS

Object of the Act —"In my opinion so far as Insurance Companies are concerned it is essentially necessary in order to effectually control them and prevent the formation of mushroom companies, that there should be provisions in the statute for—(*a*) Registration of companies under the Act , (*b*) substantial deposit to be made and (*c*) substantial working capital to be collected '—*Sen s Report on the Laws of Insurance section 40*

Registration

3. (1) No insurer shall, after the commencement of this Act, begin to carry on any class of insurance business in *British India*, and no insurer carrying on any class of insurance business in British India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Superintendent of Insurance a certificate of registration.

(2) Every application for registration shall be accompanied by—

(*a*) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 1913,* or, in the case of any other insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or, in the case of an insurer having his principal place of business or domicile outside British India, the document specified in clause (*a*) of section 63 ,

(*b*) the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act, 1913,* and in the case of an insurer specified in sub-clause (*a*) (*ii*) of clause (*9*) of section 2 the names and addresses of the proprietors and of the manager in British India, and in any other case the full address of the principal office of the insurer in British India, and the names of the directors and the manager at such office and the name and address of some one or more persons resident in British India authorised to accept any notice required to be served on the insurer ,

(*c*) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited ,

(*d*) where the provisions of section 6 or section 97 apply, a declaration verified by an affidavit made by the principal officer of the

* VII of 1913

insurer authorised in that behalf that the provisions of those sections as to working capital have been complied with,

(e) in the case of an insurer having his principal place of business or domicile outside British India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country;

(f) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound:

Provided that in the case of marine, accident and miscellaneous insurance business other than workmen's compensation and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available, and

(g) the prescribed fee for registration being not more than one hundred rupees for each class of business.

(3) In the case of any insurer having his principal place of business or domicile outside British India, the Superintendent of Insurance shall withhold registration or shall cancel a registration already made, if he is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to, insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 62 is not satisfied

(4) In the case of any insurer the Superintendent of Insurance shall cancel a registration already made if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits

(5) When the Superintendent of Insurance withholds or cancels any registration under sub-section (3) or sub-section (4) he shall give notice in writing to the insurer of his decision, and the decision shall take effect on such date as he may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission

(6) The Superintendent of Insurance shall, on being satisfied that the applicant has fulfilled all the requirements of the Act applicable to him, grant the insurer a certificate of registration

Notes —This section is intended to make registration the primary requisite, and to use the application for registration as a means of ensuring that—

(a) the necessary deposits have been made and

(b) the requisite minimum working capital is available

Sub section (3) supplies one means of securing reciprocal treatment in foreign countries A further provision to this end is to be found in section 62

Sub section (4) is aimed at securing that an insurer shall not with impunity delay or fail to complete his deposits if he secures registration on making the preliminary deposit —*Notes on Clauses*

Sub section (5) adds a supplementary provision which the Select Committee considers necessary concerning the delivery of notice when the Superintendent withholds or cancels a registration —*Report of the Select Committee*

Minimum limits for annuities and other benefits secured by policies of insurance

4 (1) No insurer, not being a provident society to which Part III, or a Co operative Life Insurance Society or a Mutual Insurance Company to which Part IV, of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of this Act an annuity of fifty rupees or less or a gross sum of rupees five hundred or less exclusive of any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid up policy of any value or payment of surrender value of any amount

(2) Nothing contained in this section shall apply to group policies, that is to say policies in respect of a group of persons engaged in the same occupation or kindred occupations under a single employer, for an aggregate sum of not less than rupees five thousand, under which an insurer pays or undertakes to pay a gross sum of rupees five hundred or less on an individual life

Restriction on name of insurer

5 (1) An insurer shall not be registered by a name identical with that by which an insurer in existence is already registered or so nearly resembling that name as to be calculated to deceive except when the insurer in existence is in the course of being dissolved and signifies his consent to the Superintendent of Insurance

(2) If an insurer, through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first-mentioned insurer shall if called upon to do so by the Superintendent of Insurance on the application of the second-mentioned insurer change his name within a time to be fixed by the Superintendent of Insurance

Provided that nothing in this section shall apply to any insurer carrying on business before the 27th day of January 1937 under the Indian Life Assurance Companies Act 1912 *

(3) No insurer other than a provident society to which Part III applies who begins to carry on insurance business after the commencement of this Act shall adopt as its name and no such insurer carrying on business before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name any combination of words which includes the word provident

Notes — We have inserted a provision on the line of section 11 of the Indian Companies Act 1913 to guard against the registration of more than one insurer under the same name —*Report of the Select Committee*

Sub section (1) —The position at common law is that an [illegible] a person has to prevent another from using a particular name depends either on (a) fraud (b) property [Cf *Warwick Tyre* v *New Motor & General Rubber Co* (1911) 1 Ch 49 He has a right

* VI of 1912

to prevent a person taking or using a name which he has identified with his goods with the deliberate intention of stealing the goodwill of his business and he has a right to prevent another however innocently from depriving him of his goodwill including the benefit of any tradename he has succeeded in appropriating and making his own *Bourne v Swan and Edgar* (1903) 1 Ch 211 In such cases damages will apparently be assumed *Stiebel's Company Law p 51* The ground upon which the Court acts in protecting tradename was stated by *James L J* in *Levy v Walker* (1879) 10 Ch D at p 447 thus It should never be forgotten that in these cases the *sole right to restrain any body from using any name he likes in the course of any* business he chooses to carry on is a right in the nature of a trademark, that is to say a man has a right to say you must not use a name whether fictitious or real—You must not use a description whether true or not which is to represent or calculated to represent to the world that your business is my business and so by fraudulent mis statement deprive me of the profits of the business which would otherwise come to me In the case of ordinary business name an individual plaintiff can only proceed on the ground that having established a business reputation under a particular name he has a right to restrain any one else from injuring his business by using that name See also *Du Boulay v Du Boulay* (1869) L R 2 P C at p 441 where *Lord Chelmsford* said The right to the exclusive use of a name in connection with a trade or business is familiar to our law and any person using that name after a relative right of this description has been acquired by another is considered to have been guilty of a fraud or at least of an invasion of another's right and renders himself liable to an action or he may be restrained from the use of the name by injunction

The provision of this section is merely supplemental to the ordinary rule upon which ... d that rule is now in no way limited by the ... efendant company *Kerly Trade Marks and* ... (1878) 9 Ch D ... eal

(1899) A C 83 An injunct ... om carrying on the same trade ... ing him as to be calculated to deceive ... company or not and in the latter c ... registration of the name *Kerly c* ... v *Montague* (1881) 17 Ch D 368 per *Jessel M R* *Panhardet Levassor v Panhard Levassor Motor Co Ltd* (1901) 2 Ch 513 per *Farwell J* The ground on which inter ference of the Court can be asked is that the use of the defendant company's name or its intended name is calculated to deceive and so to divert business from the plaintiff to the defendant or to occasion a confusion between the two businesses If it is not made out there is no ... *Co Ltd v* ... *Ltd v B* ... section it ... tion is fort ... Ch 319

... under this Act The ex ... the Act will not prevent the ... gistration will not affect the ... lar names After registration ... according to *Lord Wrenbury* ... the English Companies Act ... claim an injunction to restrain the newly registred company from trading under that ... ording to common law protection is ... nies are similar But under this ... be refused Therefore under this ... *M R* in *Omah Ceylon Estates v*

6 No insurer incorporated after, or who commenced carrying on the business of life insurance in British India whether solely or in common with any other business, after the 26th day of January, 1937, shall be registered unless he has as working capital a net sum of not less than fifty thousand rupees exclusive of the deposit to be made before registration under sub-section (5) of section 7 of this Act, and exclusive in the case of a company of any sums payable as preliminary expenses in the formation of the company

Requirements as to capital

Notes —This clause requires that there shall be a minimum working capital in case of life insurance concerns of Rs 50 000 —*Notes on Clauses* This provision has been made to prevent the formation of mushroom companies This is essentially necessary not only to ensure working on sound progressive lines but also to prevent the premium income being resorted to from the very beginning for the purpose of meeting the expenses of organisation and management of the concerns —*Sen s Report para 74*

Deposits

7 (1) Every insurer not being an insurer specified in sub-clause (*c*) of clause (*9*) of section 2 shall, in respect of the insurance business carried on by him in British India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government cash or approved securities, estimated at the market value of the securities on the day of deposit of the amount hereafter specified, namely —

(*a*) where the business done or to be done is life insurance only two hundred thousand rupees

(*b*) where the business done or to be done is fire insurance only, one hundred and fifty thousand rupees ,

(*c*) where the business done or to be done is marine insurance only, one hundred and fifty thousand rupees ,

(*d*) where the business done or to be done is accident and miscellaneous insurance including workmen's compensation, and motor car insurance one hundred and fifty thousand rupees ,

(*e*) where the business done or to be done includes life insurance and any one of the three classes specified in clauses (*b*), (*c*) and (*d*), three hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business ,

(*f*) where the business done or to be done includes life insurance and any two of the three classes specified in clauses (*b*) (*c*) and (*d*) four hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business

(*g*) where the business done or to be done includes life insurance and all three classes specified in clauses (*b*), (*c*) and (*d*), four hundred and fifty thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business ,

(*h*) where the business done or to be done does not include life insurance but includes any two of the classes specified in clauses (*b*) (*c*) and (*d*), two hundred and fifty thousand rupees ,

(*i*) where the business done or to be done does not include life insurance but includes all three classes specified in clauses (*b*), (*c*) and (*d*) three hundred and fifty thousand rupees , and

(*j*) where the business done or to be done is marine insurance relating to country craft or its cargo, ten thousand rupees only

(2) Where the insurer is an insurer specified in sub-clause (*c*) of clause (*9*) of section 2 he shall be deemed to have complied with the provisoins of this section as to deposits if in respect of any class of insurance business transacted by him in British India under a standing contract of the nature referred to in sub clause (*c*) of clause (*9*) of section 2 a deposit of an amount one-and-a half times that specified in sub section (*1*) as the deposit for that class of insurance business has been made in the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of the

securities on the day of deposit by or on behalf of the underwriters who are members of the Society of Lloyd s with whom he has his standing contract

(3) Where the deposit is to be made by an insurer incorporated before, or carrying on the business of insurance in British India before, the 27th day of January, 1937, the deposit referred to in sub section (*1*) may be made in not more than seven instalments, of which the first shall be not less than one-fourth of the total amount of the deposit and shall be paid before the application for registration is made, the second shall be not less than one-sixth of the balance of the deposit and shall be paid before the 1st day of January, 1939, and the subsequent instalments shall be of not less than the minimum amount required as the second instalment and shall be paid before the 1st day of January of each succeeding year

Provided that in the case of insurers carrying on life insurance business only, the deposit may be made in not more than ten instalments, of which the first shall be not less than one fourth of the total amount of the deposit, and shall be paid before the application for registration is made, the second shall be not less than one-ninth of the balance of the deposit and shall be paid before the 1st day of January, 1939, and the subsquent instalments shall be of not less than the minimum amount required as the second instalment, and shall be paid before the 1st day of January of each succeeding year

(4) Notwithstanding anything contained in sub-section (*3*), in the case of an insurer not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2 and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit referred to in sub-section (*1*) shall be made in two instalments of which the first shall be not less than one-half of the total amount of the deposit and shall be made before the application for registration is made, and the second shall be made before the expiry of one year from the date of registration

(5) Where the deposit is to be made by an insurer neither incorporated before, nor carrying on insurance business in British India before, the 27th day of January, 1937, the deposit may be made in instalments of not less than one-fourth the total amount before the application for registration is made, not less than one third the balance before the expiry of one year from the commencement of business in British India, and not less than one-half the residue before the expiry of two years from the commencement of business in British India and the balance before the expiry of three years from the commencement of business in British India

Provided that in the case of any insurer not being an insurer specified in sub clause (*a*) (*ii*) or sub clasue (*b*) of clause (*9*) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit shall be made in full before the application for registration is made

(6) No class of insurance business in addition to the class or classes in respect of which an insurer is already liable to make a deposit under sub-section (*1*) or sub-section (*2*) shall be undertaken by the insurer until the deposit to which he is already liable has been

made in full, and the additional deposit required in respect of the additional class of business or so much thereof as under the provisions of sub-section (3), (4) or (5) is to be made before the application for registration has also been made in full

(7) Securities already deposited with the Controller of Currency in compliance with the Indian Life Assurance Companies Act, 1912,* shall be transferred by him to the Reserve Bank of India and shall, to the extent of their market value on the day of the first deposit made in compliance with this Act, be deemed to be deposited under this Act in respect of the life insurance business of the insurer

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurer and shall be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned and any interest accruing due and collected on securities deposited under sub section (1) or sub-section (2) shall be paid to the insurer, subject only to deduction of the normal commission chargeable for the realization of interest

(9) The insurer may at any time substitute for securities lodged with the Bank under this section other approved securities of equal value at the market rate prevailing at the time of substitution, and the Reserve Bank of India shall, if so requested by a depositor, invest in approved securities the whole or any part of a deposit made originally in cash or the whole or any part of cash received by the Bank on sale of or on the maturing of securities lodged by the depositor

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities as will make up the amount so used The insurer shall be deemed to have failed to comply with the requirements of sub-section (1), unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities

Notes —No definitions have been given in the Act of life insurance fire insurance marine insurance as well as of accident and miscellaneous insurance The framer of the Act observed Of the definitions included in Act VI of 1912 the definitions of life assurance business policy of insurance on human life policy holder and policy are omitted No attempt has been made to define fire insurance business marine insurance business life insurance business or workmen s compensation insurance business although definitions of these are in 1925 Bill It is not necessary to define these terms We give below the definitions from the English Assurance Companies Act of 1909 which were reproduced in the Bill of 1925

Life Insurance business — Life insurance business means the issue of or the undertaking of liability under policies of assurance upon human life or the granting of annuities upon human life *Vide s 1 (a) of the English Assurance Companies Act of 1909 s 2 (b) of the Indian Life Assurance Companies Act of 1912 and section 2 (j) of the Indian Insurance Bill of 1925* Policy of assurance on human life means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life or any [illegible]
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Prudential v [illegible] (1904) 2 K B C [illegible] *Joseph v Law Integrity* (1912) 2 Ch [illegible] *Re [illegible]* [illegible] *Hari Chand [illegible] v Hindustan Co-operative* [illegible] A I R [illegible] Cal [illegible] Where a policy purports to secure the payment of a certain sum at the end of a fixed term in consideration of a

* VI of 1912

weekly premium and charges the funds of the company with its payment and provides that if the assured should die before the date on which the sum became payable a percentage of the premiums received on account should be payable to the representatives or assignees of the assured the form of the policy is that of a policy of insurance on human life *Joseph v Law Integrity Insurance Co Ltd*, (1912) 2 Ch 581=107 L T 538 A policy of insurance which stated that in respect of the payment by the assured of 2s 6d per month the company issuing the policy would pay the assured or to his representatives a monthly allowance of £4 in the event of accident and £100 in the event of death or loss of limbs or sight by accident, contained a stipulation for the return to the
all the premiums paid under the policy, as soon
the event of his previous death if the policy rem
trument was in its nature primarily a policy
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assured or on his reaching a certain age was merely incidental and would be meaningless as a contract of life insurance if it were read apart from the other provisions of the policy and accordingly, thirdly that the instrument fell to be assured and charged only as an accident insurance policy *General Accident Assurance v Inland Revenue* 8 F 477–43 S L R 367 N & Co were tea merchants who in connection with their business as such had since 1897 offered to married women who had bought their tea for a certain time, before the death of their husbands annuities of a certain amount so long as they remained widows N & C
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insurance though referred to as such is excluded *Per Astbury J* in *United London and Scottish Insurance In re* 84 L J Ch 544=(1915) 2 Ch 12 In the Court of Appeal *Lord Cozens Hardy M R* said "I do not see my way in this case to differ from the view taken by *Mr Justice Astbury* The case arises upon construction of the Assurance Companies Act, 1909 This is a very difficult Act to construe, and I had occasion to consider it in the *Law Cor and General Insurance Corporation In re* [82 L J Ch 467=(1913) 2 Ch 103], but the present case does not seem to me to present any serious difficulty Fire insurance business is defined in section 1, sub section (6) of the Act as the issue of or the undertaking of liability under policies of insurance against loss by or incidental to fire The policy in question here undoubtedly falls within that definition It is an insurance against loss by or incidental to fire of a vessel which on the Great Lakes in America or in dry Dock where it might be temporarily put for repairs The policy also includes salvage claims or losses by reason of general assuage Unless there was something in the Act beyond section 1 sub section (6), every ordinary Lloyd s policy would it seems to me or certainly might come within the meaning of fire insurance business because practically every Lloyd s policy really includes amongst other risks insured against that of fire These policies are however taken out of the Act by section 28 sub section (3), which provides that nothing in this Act shall apply to assurance business of any class other than one of the classes specified in section one of this Act and a policy shall not be deemed to be a policy of fire insurance by reason only that loss by fire is one of the various risks covered by the policy' The policy in the present case is not however within the saving clause of this sub section This is not a policy of insurance of which fire is only one of the various risks covered but is a policy which is solely against loss by or incidental to fire, and the operative and effective clause is therefore section 1, sub section (6)'

Marine Insurance business — Marine Insurance business means the issue of, or the undertaking of liability under policies of insurance against loss or damage to any vessel or to goods wares merchandise or property of any kind in transit by water *Vide s 2 (m) of the Insurance Companies Bill of 1925* But this definition also for obvious reason has not been included in the present Act Marine Insurance contract has been thus defined in the English Marine Insurance Act of 1906 A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured in manner and to the extent thereby agreed against marine losses that is to say, the loss incident to marine adventure *Vide s 1 of the Marine Insurance Act of 1906* A policy in the form of a marine policy but not insuring against loss incident to a marine adventure is not within this definition *In re London County Commercial Re insurance office* (1922) 2 Ch 67 68

Accident Insurance business — Accident insurance business ' is defined as the issue of or the undertaking of liability under policies of insurance upon the happening of personal accidents, whether fatal or not disease or sickness or any class of personal accidents disease or sickness [*Assurance Companies Act 1909 s 1 (c)*] But this definition also for obvious reasons have not been adopted in the Indian Act

Sub section (*1*) fixes the amount of the deposit required for the four classes of insurance business Sub section (*3*) provides for payment by instalments —*Statement of Objects and Reasons* The reason for such deposits thus stated by Mr Sen in para 45 of his report Complaints have been made for sometime past and the provisions for deposits in the case of Life Insurance Companies are much too moderate and that unless the amount of the deposit is substantially increased there is no change of preventing mushroom companies from coming into existence and various suggestions have been made from time to time for the increasing of the amount of the initial deposit as also of the aggregate amount thereof Whatever may be the popular point of view the Government has however in my opinion a very heavy responsibility in the matter The Government has got to see in the first place that there is no provisions made in the statute as to deposits which will by reason of the largeness of the amount have the effect of injuring sound companies which are working on a small capital '

that class The enlargement of the classes of security which may be utilized in making deposits has been referred to in connection with definition (3) of section 2 We have increased the deposit for miscellaneous insurance to the same figure as the deposits required for fire and marine insurance and we have provided that the deposit must be made at an office in India of the Reserve Bank and not in London '—*Report of the Select Committee*

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tion —*Report of the Select Committee*

Sub section (6) — We have revised the wording to make it perfectly clear that the provisions as to payment by instalments apply to additional deposits is returnable under the Act ' —*Report of the Select Committee*

Sub section (8) —' We consider that where cash is deposited by the insurer, he should have the right to receive cash of the same amount if at any time his deposits is returnable under the Act ' —*Report of the Select Committee*

Sub section (9) —Provision has been made in this sub section for the substitution of securities which may be lodged by the Insurance Company with the Reserve Bank under

weekly premium and charges the funds of the company with its payment and provides that if the assured should die before the date on which the sum became payable a percentage of the premiums received on account should be payable to the representatives or assignees of the assured the form of the policy is that of a policy of insurance on human life *Joseph v Law Integrity Insurance Co Ltd*, (1912) 2 Ch 581 = 107 L T 538 A policy of insurance which stated that in respect of the payment by the assured of 2s 6d per month the company issuing the policy would pay the assured or to his representatives a monthly allowance of £4 in the event of accident, and £100 in the event of death, or loss of limbs or sight by accident, contained a stipulation for the return to the
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insurance though referred to as such is excluded Per *Astbury J* in *United London and Scottish Insurance In re*, 84 L J Ch 544 = (1915) 2 Ch 12 In the Court of Appeal *Lord Cozens Hardy M R* said "I do not see my way in this case to differ from the view taken by *Mr Justice Astbury* The case arises upon construction of the Assurance Companies Act, 1909 This is a very dificult Act to construe, and I had occasion to consider it in the *Law Cor and General Insurance Corporation, In re* [82 L J Ch 467 = (1913) 2 Ch 103], but the present case does not seem to me to present any serious difficulty Fire insurance business is defined in section 1, sub section (6) of the Act as 'the issue of, or the undertaking of liability under, policies of insurance against loss by or incidental to fire" The policy in question here undoubtedly falls within that definition It is an insurance against l ... of a vessel
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in section one of this Act and a policy shall not be deemed to be a policy of fire insurance by reason only that loss by fire is one of the various risks covered by the
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Sub section (*1*) fixes the amount of the deposit required for the four classes of insurance business Sub section (*3*) provides for payment by instalments —*Statement of Objects and Reasons* The reason for such deposits thus stated by Mr Sen in *para* 45 of his report Complaints have been made for sometime past and the provisions for deposits in the case of Life Insurance Companies are much too moderate and that unless the amount of the deposit is substantially increased there is no change of preventing mushroom companies from coming into existence and various suggestions have been made from time to time for the increasing of the amount of the initial deposit as also of the aggregate amount thereof Whatever may be the popular point of view the Government has however in my opinion a very heavy responsibility in the matter The Government has got to see in the first place that there is no provisions made in the statute as to deposits which will by reason of the largeness of the amount have the effect of injuring sound companies which are working on a small capital

Sub section (1) — We consider having regard to the special nature of their business and to the relatively small volume of that business transacted in India that there should be one deposit only for each class of business transacted by all insurers in India who work in conjunction with Lloyd s but that deposit should be somewhat larger than the deposit made by an ordinary insurer To give effect to this decision we have taken the [illegible]

been done any insurer working under a contract with Lloyd s to transact business of that class The enlargement of the classes of security which may be utilized in making deposits has been referred to in connection with definition (3) of section 2 We have increased the deposit for miscellaneous insurance to the same figure as the deposits required for fire and marine insurance and we have provided that the deposit must be made at an office in India of the Revenue Bank and not in London —*Report of the Select Committee*

Sub section (3) — We consider that while the provisions contained in sub clause (2) may be more properly applied to existing insurers other than those doing life insurance business where the business of life insurance is involved a somewhat extended period on more easy terms should be allowed We have accordingly provided in the new sub clause (4) for payment in seven instalments beginning with the payment of one fourth of the amount due except where the insurer is a foreign company in which case we consider and have provided in the new sub clause (5) that the deposits should be made in two instalments almost in the case of existing companies Similarly we have provided by our addition to sub section (5) that foreign companies starting business after this legislation was set on foot shall make the deposit in full before application of registration —*Report of the Select Committee*

Sub section (6) — We have revised the wording to make it perfectly clear that the provisions as to payment by instalments apply to additional deposits is returnable under the Act —*Report of the Select Committee*

Sub section (8) — We consider that where cash is deposited by the insurer he should have the right to receive cash of the same amount if at any time his deposits is returnable under the Act —*Report of the Select Committee*

Sub section (9) —[illegible] sub section for the substitution of securities which may be lodged by the Insurance Company with the Reserve Bank under

of securities by another should any company find it necessary to do so —*Sen s I eport para 73*

8 (1) Any deposit made under section 7 shall be deemed to be part of the assets of the insurer but shall not be susceptible of any assignment or charge , nor shall it be available for the discharge of any liability of *the insurer other than liabilities arising out of policies of insurance* issued by the insurer so long as any such liabilities remain undischarged , nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way

Reservation of deposits

(2) Where a deposit is made in respect of life insurance business the deposit made in respect thereof shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer

Notes —S [illegible] (1) [illegible] saving them for [illegible] *on (2)* provides that [illegible] only for liabilities [illegible] that each of the [illegible] to policies of its own class But the Select Committee in [illegible] consider that the reservation of deposits for [illegible] with business of the class in respect of [illegible] only to life insurance business —*Report* [illegible] section is to protect deposit from attach [illegible] creditor of the company

9 Where an insurer has ceased to carry on in British India any class of insurance business in respect of which a deposit has been made under section 7 and his liabilities in British India in respect of business of that class have been satisfied or are otherwise provided for, the Court may, on the application of the insurer, order the return to the insurer of so much of the deposit as does not relate to the classes of insurance, if any, which he continues to carry on

Refund of deposits

Notes —Act VI of 1912 made no specific provision for the return of deposits This was however included in the 1925 Bill This section reproduces clause 16 of the Bill of 1925

10 (1) Where the insurer carries on business of more than one of the classes specified in clauses (*a*), (*b*), (*c*) and (*d*) of sub-section (*1*) of section 7, he shall keep a separate account of all receipts and payments *in respect of each such class of insurance business*

Separation of accounts and funds

(2) Where the insurer carries on the business of life insurance, the excess of receipts over payments in respect of such business shall be carried to and shall form a separate fund to be called the life insurance fund and the deposit made by the insurer in respect of life insurance business shall be deemed to be part of such fund

(3) The life insurance fund shall be as absolutely the security of the life policy-holders as though it belonged to an insurer carrying on no other business than life insurance business and shall not be liable for any contracts of the insurer for which it would not have

been liable had the business of the insurer been only that of life insurance and shall not be applied directly or indirectly save as provided in section 49 for any purposes other than those of life insurance

Notes — Separate assets are required to be kept only in respect of life insurance business but separate accounts are required for each of the four main clauses into which insurance business is divided Sub clauses (2) and (3) reproduce sections 5 and 6 of the Act VI of 1912 —*Notes on Clauses* Similar provision is found in the English Assurance Companies Act of 1909 (*Vide* s 8) The object of the enactment of this section and

nt life insurance Companies
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Companies Act of 1909 and was
(1917) 1 Ch at page 193 (*In re* *National Standard Life Assurance Corporation*) One of the questions which came up for the consideration of the learned Judge was as to whether this provision was sufficient to create a charge in favour of the policy holders over the statutory depos t so as to oust the
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holders of a particular class with
reg lers having a charge given by the
cor g would have been easier than to
have said so It seems to me that that is not the intention of the Act

with the r ghts of a mortgagee
vented a company from creat ng
ortgagee from obtaining priority

the general assets of the company and as such equally accessible to creditors whose claims
the other claims of insurance

already recommended that deposits be
for discharg i g the obl gat o s to the

(iii) the securities deposited by a company under the Act with the Controller shall be available to satisfy any final judgment obtained in British India by any policy holder against the company in respect of any policy and any such judgment may be satisfied out of such securities accordingly and thereupon the deposit shall be deemed to be reduced by the amount of the payment so made

(iv) no part of the securities deposited with the Controller by any company in respect of any particular class of business shall while any liabilities incurred by the company in respect of that class of business remain unsatisfied or not otherwise provided for be available to meet any other liabilities incurred by it

In my opinion these provisions must be made in the statute so far as deposits are concerned in order to ensure that they will be available in the first instance to meet the claims of the policy holders "—*Vide pages 68 to 72 of Mr Susil C Sen s Report on the Laws of Insurance* But the Select Committee in making certain change in sub section (2) *of section 8 said We consider that* the reservation of deposits for liabilities arising out of policies connected with business of the class in respect of which the deposit is made should be applicable only to life insurance business

Separate accounts —In *Att Gen* v *Forsikringsaktieselskabet National*, 93 L J K B 679, *Branson J* said My chief reason is based on the fact that if re insurance of life and fire and other risks is not insurance business within the statute there arises the extraordinary position that a company which is carrying on life or fire business, and which at the same time is re insuring another company s life or fire risks, must keep separate accounts in rotation to them

Separate fund —As regards separate fund *vide In re Welson & Co*, (1905) 1 Ch 551

11 (1) Every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause(*b*) of clause (*9*) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall at the expiration of each calendar year prepare with reference to that year—

Accounts and balance sheet.

(*a*) in accordance with the regulations contained in Part I of the First Schedule, a balance-sheet in the form *set forth in* Part II of that Schedule,

(*b*) in accordance with the regulations contained in Part I of the Second Schedule, a profit and loss account in the forms set forth in Part II of that Schedule, except where the insurer carries on business of one class only of the classes specified in clauses (*a*), (*b*) and (*c*) of sub-section (*1*) of section 7 and no other business,

(*c*) in respect of each class of insurance business carried on by him in accordance with the regulations contained in Part I of the Third Schedule, a revenue account in the form or forms set forth in Part II of that Schedule applicable to that class of insurance business

(2) Unless the insurer is a company to which the Indian Companies Act, 1913 * applies, the accounts and statements referred to in sub section (*1*) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in the case of a firm by two partners of the firm, and shall be accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report by such persons on the affairs of the business during that period

(3) Where an insurer carrying on the business of insurance at the commencement of this Act has prepared the balance-sheet and accounts required by the Indian Life Assurance Companies Act, 1912,†

* VII of 1913 † VI of 1912.

or has based his accounts upon the financial and not the calendar year, the provisions of this section shall, if the Central Government so directs in any case, apply until the 31st day of December, 1939, as if in sub-section (1) references to the calendar year were references to the financial year

Notes —This section is intended to require that an Indian insurer shall in respect of all business and a non Indian insurer including a Lloyd's agent shall in respect of business transacted in India prepare—

(a) a balance sheet

(b) a profit and loss account whenever he confines any two or more of the business of life fire and marine insurance and even if he only does the single business of miscellaneous insurance The provision relating to miscellaneous business has been made because in the case of miscellaneous insurance a profit and loss account is necessary to enable the gain or loss on the different sub classes included in this class to be ascertained as this may not be able to be done from the revenue account for miscellaneous insurance and

calendar year as the year of account since sub clause (1) now makes the latter the year of account

This clause read with Schedules I to III, incorporates to Second Third and Fourth Schedules of the Clauson Bill with the modifications necessary to adapt them to Indian conditions.

The effect of sub clause (1) (d) is to secure that nearly all the details specified in section 7 (e) of Act VI of 1912 have to be supplied with the Revenue Account (*see* Regulation 6 of Part I of the Third Schedule) —*Statement of Objects and Reasons The Select Committee in their report* says "We consider that the accounts here dealt with should cover not only business transacted in British India but in Indian States as well"

12. The balance-sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall, unless they are subject to audit under the Indian Companies Act, 1913,* be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913*

Audit

Notes —Act VI of 1912 provides for the audit in such a manner as may be prescribed, of the accounts of life insurance companies and the Indian Companies Act requires companies, subject to that Act to undergo audit This section provides for the general ... n British India ... der the Indian ... t requiring the ... ion 145 of the

Auditor's Right of access to books —Where the directors of a registered company

* VII of 1913

which the shareholders have had an opportunity of stating whether or not they desire that the auditors should continue to act as such *Cuff and anoth...* (1912) 1 Ch 440 = 81 L J Ch 426 ... his judgment said ' Ol... interlocutory application ... year when the audit wou... dispute are mainly point... sufficiently ascertained, I... question is, are the pl... which they assert ? The... to perform certain duties ... of the Act of 1908 They include the ... balance sheet laid before the company ... such report to state (*inter alia*) whether in t... referred to therein is properly ... auditors the balance sheet ... company's affairs as shown by ... letter of these statutory requireme... with the figures in the balance sheet but no one would suggest that the duty of the auditors is limited to ascertaining that the entries in the books of the company are correctly transcribed or summarised in the balance sheet As was pointed out by the Court of Appeal, he is bound to enquire and to take trouble to ascertain whether the books themselves show the company's true position ... uch investigation must be of ... bers invoices, and documents ... books originate In order to ... lothed with statutory powers ... contemplates the possibility of ... arising in the office, but does not in terms empower the auditor to resign or the company to remove him during this year of office

' In these circumstances what is the position ? The auditors are bound to discharge their duties, and in so doing are entitled to assert and exercise the statutory powers conf... ncompetency and negligence afford ... nor is there any substance in the ... an opportunity of ascertaining ... brought against them the ... no such action pending ... he auditors claim to have ... I think, therefore that ... tory order in the terms of ... the notice of motion, and I do so " But on appeal, the Appellate Court reversed the order

Farewell L J in delivering the judgment of the Appellate Court observed . "In my opinion the order of Mr ... of a very usual nature ... ory application was enabled to commit ... late Secretary the company, having ... the auditors of auditors by not properly ... f their duties as having inspected the co... ticular by never ... ents and that the company would hold the auditors liable for any loss they might sustain thereby The directors being exceedingly dissatisfied with the auditors for having failed to inspect these books, told them that they were not to act as auditors of the company any longer

"As soon as they received notice of th... inst them and before anything ... company's books *Prima facie* ... ing to get discovery in an action ... before the issue of the writ—which ... er put their claim on the ground ... the interests of the company , ... his right to see the books is statutory and cannot ... gh an auditor be a convicted felon, by any possibility be taken away from him ... an extravagant claim, but even if it ... tiffs here It is one thing to show that ... another thing to say that the Court in ... nd to grant a mandatory injunction in ... tly clear that the Court is not bound ... of the sort In all cases of this nature in which questions arise relating to the interval management of the company, it has always been the practice of the Court so far as my experience goes, to direct that a meeting of the shareholders be summoned for the purpose of ascertaining what their wishes are I cannot assent

to the contention of the Counsel for the plaintiffs that the auditors in such matters as these are the supreme autocrats over all the other partners concerned They are servants of the company, appointed by the company, and if the company does not desire them to act no Court will by mandatory injunction, force them upon it If in the present case the company in general meeting resolves that having regard to the non inspection of these counterfoil receipt books during several years the plaintiffs should not continue to act as auditors, I cannot see how any Court could possibly, by way of injunction, compel specific performance of this contract of service as auditors

" If on the other hand the shareholders do reject them the Court ought not to interfere with their wishes In *Bainbridge v Smith*, ((1889) 41 Ch D 462) in which under a contract entered into between a company and the vendors of a brewery the

it was held by the Court

as much as the shareholders

irt for that purpose resolved

l not interfere to force him on

the company '

' I find no difficulty in section 113 of the Act of 1908 which provides that the auditors shall make a report to the shareholders on the accounts examined by them and on every balance sheet laid before the company during their tenure of office That provision means that the auditors shall make that report as auditors and as incident to their performance of their duties as auditors If whether rightly or wrongly they have been dismissed or excluded vi et armis by the company no body can possibly blame them for not having

in this Court is concerned fails

Duties of auditors —In majority of cases the articles contain directions with reference to the duties of the auditors and in such cases the auditors are bound to comply with such requirement *Kingston Cotton Mill Co*, (No 2) (1896) 2 Ch 279 In the above case at page 284, *Lindley L J* said Auditors are in my opinion bound to see what exceptional duties if any are cast upon them by the articles of the company whose accounts they are called upon to audit Ignorance of the articles and of the exceptional duties imposed by them would not afford any legal justification for not observing them In *Republic of Bolivia etc* (1914) 1 Ch 139=83 L J Ch 235 *Astbury J* said ' In support of the liquidator s contention on the above facts it is alleged that *qua* company finance of which they profess to be experts auditors must at least make themselves acquainted with the general features of such legal regulations as govern the methods and restrictions as to limited companies accounts and finance and that the accounts as audited by them must correspond with the reality in law of the company s financial position, and that damages must be assumed to have resulted in this case from its not having been pointed out in time that the directors were liable to refund these moneys

Now there are some legal matters which an auditor must obviously know, as there are others which it is equally obvious he could not be held responsible for not knowing, and it may not always be easy to say in which category any particular case falls I think that the auditors of a limited company are bound to know or make themselves acquainted with their duties under the articles of the company whose accounts they

rtford speaking of auditors

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y being, on the other hand, to

e *Leeds Estate* v *Shephard*,

Stirling said It was in my

mself merely to the task of

verifying the arithmetical accuracy of the balance-sheet but to enquire into its substantial accuracy, and to ascertain that it contained the particulars specified in the Articles of Association (and consequently a proper income and expenditure account) and was properly drawn up so as to contain a true and correct representation of the state of the company s affairs And the learned Judge referring to the fact that the auditor who knew of the company s articles did not look at them stated that this fact afforded some evidence as to the degree of care exercised by them This case established that if as the natural con equence of an auditor s breach of duty payments are made which are a misapplication of the company s funds the auditors are responsible [His Lordship then referre

) (1896) 2 Ch at p 281=65 L J Ch at p 675 however against the notion that an auditor is bound to be suspicious as distinguished from reasonably careful But after holding that made by the manager who had no he contrasted this with a cashier s could not be reasonably taken by an *Corporation* (1900) 1 Q B at p 21=69 L J Q B at page 54 *Lord Russel of Killowen* speaking of the duty of an auditor of an urban sanita

to go further than that that there are not amongst t the duty of the authority or contrary to the duty of the authority or in any other way illegal or improper If he discovers that any such improper or illegal payments appear to have been made his duty will certainly be to make it public by report to the authority itself and the burgesses who create that authority

Now applying these principles as best as I can to the facts of this case I have operly paid for commission for respondents failed in their payments were under the first audited balance sheet specially having regard to the fact that the balance sheet states in terms for what the sums in question were paid

In City Equitable Fire Insurance Co Limited in re (1925) 1 Ch 407, *Romer J* said That it is the duty of a company s auditor in general to satisfy himself that the securities of the company in fact exist and are in safe custody cannot I think be gainsaid If authority for the proposition be required it may be found in the passage from *Lindley L J s* judgment in the *London and General Bank Case* which has other things saw that the

after the event and say you had discovered it would t it has been well said that an his work with suspicion or with He is a watch dog but not a in *Kingston Cotton Mill Co* aside the position is more *L J* who said that the *The Kingston Cotton Mill* case is important because expansion is given to those rather epigrammatic phrases *Lindley L J* says (1896) 2 Ch at p 287 It is not sufficient to say that the frauds must have been detected if the entries in the books had been put together in a way which never occurred to anyone before suspicion was aroused The question is whether

present it to the members *Ibid.*

Duty of auditor is not to give advice to shareholders or directors — It is no part of an auditor's duty, said *Lindley L J* in *In re, London General Bank*, (1895) 2 Ch 673 at page 682, "to give advice, either to directo

do An auditor has nothing to do with the p

or without security It is nothing to him

conducted prudently, profitably or unprofitabl

are properly or improperly declared provid

would be worse than an idle farce Assuming the books to be so kept as to show the true position of a company, the auditor has to frame a balance sheet shewing that position according to the books and to certify that the balance sheet presented is correct in that case. But his first duty is to examine the books, not merely for the purpose of ascertaining what they do show, 'but also for the purpose of satisfying himself that they show the true financial position of the company This is quite in accordance with the decision of *Stirling J in Leeds Estate Building and Investment Co v Shepherd*, (36 Ch D 802) An auditor, however, is not bound to do more than exercise reasonable care and skill in making inquiries and investigations He is not an insurer, he does not guarantee that the books do correctly shew the true position of the company's affairs, he does not even guarantee that his balance sheet is accurate according to the books of the company. If he did, he would be responsible for error on his part, even if he were himself deceived without any want of reasonable care on his part, say, by the fraudulent concealment of a book from

the audit

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will be reasonably sufficient, and in practice I believe *businessmen select a few cases at* haphazard, see that they are right and assume that others like them are correct also

ry, but still, an auditor is not

in a case of suspicion, and he

pert where special knowledge is

88 Ind Cas 785 = 23 A L J.

13. (1) Every insurer carrying on life insurance business shall, in respect of the life insurance business transacted by him in India, and also in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2 in respect of all life insurance business transacted by him, once at least in every five years cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with

Actuarial report and abstract.

the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule.

(2) The provisions of sub-section (*1*) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public

(3) There shall be appended to every such abstract as is referred to in sub-section (*1*) or sub-section (*2*) a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation

(4) There shall be appended to every such abstract a statement, in conformity with the requirements of Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule of the life insurance business in force at the date to which the accounts of the insurer are made up for the purposes of such abstract

Provided that, if the investigation referred to in sub-sections (*1*) and (*2*) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every five years

(5) Where an investigation into the financial condition of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance-sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by this Act

Notes —This section follows clauses 25 and 26 of the 1925 B ll which enlarges section 8 of Act VI of 1912 but incorporates the two Schedules referred to in clause 8 (*2*) (*3*) and (*4*) of the Clauson Bill with however considerable modifications to adapt them to Indian conditions—*Notes on Clauses*

Register of policies and register of claims

14 Every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub clause (*b*) of clause (*9*) of section 2 in respect of all business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall maintain—

(*a*) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and

(*b*) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected the date of rejection and the grounds therefor

Notes —This section has been added by the Select Committee In making the addition the Select Committee observed We have made it obligatory for an insurer established in India to maintain registers of policies issued and claims made —*Report of the Select Committee*

15 (1) The audited accounts and statements referred to in section 11 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Superintendent of Insurance within six months from the end of the period to which they refer The Superintendent of Insurance may extend the time allowed for furnishing the abstract and statement referred to in section 13 by a period not exceeding three months

Submission of returns

Provided that the said period of six months shall in the case of insurers having their principal place of business or domicile outside India and in the case of insurers constituted, incorporated or domiciled in British India but also carrying on business outside India be extended by three months, and provided further that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm and, in the case of an insurer being an individual, by the insurer himself

(3) Where the insurer s principal place of business or domicile is outside British India, he shall forward to the Superintendent of Insurance, along with the documents referred to in section 11 the balance-sheet, profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled or, where such documents are not required to be filed a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period

Notes — Regarding the speci
non Indian insurers see paragraph
gives effect in a modified form to
report at page 86 It is drafted so
copies of the balance sheets profit and loss accounts etc of their general business instead of abstracts if it is found more convenient by them —*Notes on Clauses* The section as or g nally drafted has under gone certain change in the l ands of the Select Committee In making the change the Select Comm ttee observed —

Clause 12 (Now 14) sub clause (1)—A small inaccuracy has been corrected and the time for submisson of tl e balance sheet and revenue and profit and loss accounts has been extended from three to six months and the provision for extension of this

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Para 285 of Mr Sen s Report runs as follows —

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documents as would
its Ind an business
to be complied and verified therefrom

(b) Every foreign company should in respect of the business done in British India furnish the same accounts and statements as have to be furnished by Indian Companies under the Act

(c) Every foreign company shall also along with the documents referred to in clause (b) file copies of—

(i) the Revenue Account

(ii) Balance sheet and

(iii) the Profit and Loss Account of its general business

In cases where companies do not under the law of the country of their origin keep such accounts they must file—

(i) short abstracts showing their general assets and liabilites during the period in question and

(ii) The income and expenditure from their general business

As to the time within which these documents are to be filed I have already made my recommendations with regard to Indian companies and I suggest that the same provisions

Para 55

16 (1) Where, by the law of the country in which an insurer, not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, is constituted, incorporated or domiciled the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents required to be furnished as returns in accordance with the provisions of section 15, the provisions of sub section (2) of this section shall apply to such insurer in lieu of the provisions of sections 11, 12 13 and 15

Returns by insurers established outside British India

(2) The insurer shall, within the time specified in sub-section (1) of section 15, furnish to the Superintendent of Insurance four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (1) of this section, and, in addition thereto, four copies in the English language of each of the following statements namely —

(a) a statement showing the assets held by the insurer in India

(b) for each class of insurance business carried on by him a revenue account in the form or forms set forth in Part II of the Third Schedule applicable to that class of business, showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under this clause of this sub section,

(c) an abstract of the valuation report in respect of all life insurance business transacted by the insurer in India prepared in the manner required by sub section (1) of section 13 and

(d) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account

Notes —Section 16 is designed to meet the difficulty that would be experienced by external insurers operating through a branch or agency in British India in supplying the accounts referred to in section 12 for that portion of their business which is carried on

business The returns made to the Board of Trade in England or to the Governments of countries which have made adequate provision for the control of insurance supplemented by the information contained in the special revenue accounts for business transacted in British India which are required by this clause will it is thought supply all the information which is necessary to obtain' —*Notes on Clauses* In making certain alterations in the original draft the Select C

English translations of foreign
clause (2) The first requires
statements on the same lines as th
second requires disclosure in the revenue account of all moneys received from outside India —*Report of the Select Committee*

Exemption from certain provisions of the Indian Companies Act, 1913

17 Where an insurer, being a company incorporated under the Indian Companies Act, 1913,* in any year furnishes his accounts and balance-sheet in accordance with the provisions of section 15, he may at the same time send to the Registrar of Companies a copy of such accounts and balance-sheet, and where such copy is so sent it shall not be necessary for the company to file a balance sheet with the Registrar as required by sub-section (*1*) of section 134 of that Act and the copy of the accounts and balance-sheet so sent shall be dealt with in all respects as if they were filed in accordance with that section

Furnishing reports

18 Every insurer shall furnish to the Superintendent of Insurance a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members or policy-holders, as the case may be

Abstract of proceedings of general meetings

19 Every insurer, being a company or body incorporated under any law for the time being in force in British India shall furnish to the Superintendent of Insurance an abstract of the proceedings of every general meeting within thirty days from the holding of the meeting to which it relates

Custody and inspection of documents and supply of copies

20. (1) Every return furnished to the Superintendent of Insurance or a certified copy thereof shall be kept by the Superintendent and shall be open to inspection and any person may procure a copy of any such return, or of any part thereof on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied any five figures being deemed equivalent to one word

(2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 or section 16 shall on the application of any shareholder or policy-holder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted incorporated or domiciled in British India and in any other case within one month of such application

(3) A copy of the memorandum and articles of association of the insurer if a company shall on the application of any policy-holder be supplied to him by the insurer on payment of one rupee

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Notes — Th ... t ... 1

have also extended the time allowed for complying with a requisition —*Report of the Select Committee*

21 (1) If it appears to the Superintendent of Insurance that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he may—

Powers of Superintendent of Insurance regarding returns

(*a*) require from the insurer such further information certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return ,

(*b*) call upon the insurer to submit for his examination at the principal place of business of the insurer in British India any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose ,

(*c*) examine any officer of the insurer on oath in relation to the return ,

(*d*) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer and if he declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 relating to the furnishing of returns

(2) The Court may on the application of an insurer and after hearing the Superintendent cancel any order made by the Superintendent under clause (*a*), (*b*) or (*c*) of sub-section (*1*) or may direct the acceptance of any return which the Superintendent has declined to accept, if the insurer satisfies the Court that the action of the Superintendent was in the circumstances unreasonable

Notes —Section 21 is based on clause 30 of the 1925 Bill but has been expanded to include the recommendations contained in paragraph 148 (*d*) (*e*) and (*f*) of Mr Sen s Report page 42 and the safeguard mentioned in that paragraph at the top of page 43 —*Notes on Clauses* Paragraph 148 (*d*) (*e*) and (*f*) of Mr Sen s Report runs as follows —

(*d*) That the Superintendent shall be entitled to address any enquiries to any company ... or require any explanat on ... dition and or its abil ty to ... arising out of any return ... statute and that it shall ... in writing to such enquiries within the time allowed by the Superintendent ... h an enquiry to ... cument of the ... him that any ... t is incomplete ... e requirements ... n thereof and that it shall be the duty of the company concerned to comply w th tl e directions so g ven

22 If it appears to the Superintendent of Insurance that an investigation or valuation to which section 13 refers does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation he may, after giving notice to the insurer and giving him an opportunity to be

Power of Superintendent of Insurance to order re valuation

heard, cause an investigation and valuation to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Superintendent of Insurance

Notes —Mr Sen in his report recommends that the Government Actuary should be

the Select Committee In making the amendment the Select Committee observes The amendments provide that an insurer shall have an opportunity of showing cause against an order of the Superintendent of Insurance for re valuation and for the allocation of the cost of re valuation —*Report of the Select Committee*

23 (1) Every return furnished to the Superintendent of Insurance, which has been certified by the Superintendent to be a return so furnished shall be deemed to be a return so furnished

Evidence of documents

(2) Every document, purporting to be certified by the Superintendent of Insurance to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved

Notes —This section reproduces clause 37 of the Bill of 1925 and corresponds to Ss 29 and 30 of Act VI of 1912 —*Notes on Clauses*

24. The Central Government shall every year cause to be published, in such manner as it may direct, a summary of the accounts, balance-sheets, statements abstracts and other returns under this Act or purporting to be under this Act which have been furnished to the Superintendent of Insurance for the year preceding the year of publication and may append to such summary any note of the Central Government and any correspondence in relation thereto

Summary of returns to be published

Notes —This section reproduces clause 38 of the Bill of 1925 and corresponds to s 28 of Act VI of 1912 —*Notes on Clauses*

25 No insurer shall publish in British India any return in a form other than that in which it has been furnished to the Superintendent of Insurance

Returns to be published in statutory forms

Provided that nothing contained in this section shall prevent an insurer from publishing a true and accurate abstract from such returns for the purposes of publicity

Notes —This section reproduces clause 39 of 1925 Bill The forms in which insurance Superintendent have been carefully drawn essential information It is a necessary be made available to the public —*Notes on*

26 Whenever any alteration occurs or is made which affect any of the matters which are required under the provisions of sub-section (2) of section 3 to accompany an application by an insurer for registration, the insurer shall forthwith furnish to the Superintendent of Insurance full particulars of such alteration

Alterations in the particulars furnished with application for registration to be reported

Notes —This section has been added by the Select Committee In this section provision has been made on the lines followed in section 63 for securing the continued accuracy of the information which must be given to the Superintendent of Insurance —*Report of the Select Committee*

Investment, Loans and Management

Investment of assets and restiction on loans

27 (1) Every insurer incorporated or domiciled in British India shall, subject to the provisions of sub-section (*3*), at all times invest and hold invested assets equivalent to not less than fifty-five per cent of the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit made under section 7 by the insurer in respect of his life insurance business and less any amount due to the insurer for loans granted by him on policies of life insurance, in the manner following, namely, twenty-five per cent of the said sum in Government securities and a further sum equal to not less then thirty per cent of the said sum in Government securities or other approved securities or securities of or guaranteed as to principal and interest by the Government of the United Kingdom

Explanation —The provisions of this sub-section shall apply also to insurers incorporated in or domiciled in the United Kingdom

(2) An insurer incorporated or domiciled elsewhere than in British India or the United Kingdom shall, subject to the provisions of sub-section (*3*), at all times invest and hold invested assets equivalent to not less than the sum of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit made under section 7 by the insurer in respect of his life insurance business and less any amount due to the insurer on loans granted by him on policies of life insurance in the manner following, namely, thirty-three and one-third per cent of the said sum in Government securities, and the balance in Government securities or other approved securities or securities of or guaranteed as to principal and interest by the Government of the United Kingdom

(3) An insurer carrying on business at the commencement of this Act to whom sub-section (*1*) or sub-section (*2*) applies shall before the expiry of four years from the commencement of this Act invest the total amount required to be invested by those sub sectons in the manner required thereby

Provided that of such total amount the insurer shall have invested not less than one-fourth in securities of the nature specified in sub-section (*1*) before the expiry of one year, not less than one-half before the expiry of two years, and not less than three-fourths before the expiry of three years from the commencement of this Act

(4) The assets required by this section to be held invested by an insurer to whom sub-section (*2*) applies shall be held in trust for the discharge of claims of the nature referred to in sub section (*2*) and shall be vested in trustees resident in British India and approved by

the Central Government by an instrument of trust which shall be executed by the insurer and approved by the Central Government and shall define the manner in which alone the subject-matter of the trust shall be dealt with

Explanation—Sub-sections (2) and (4) shall apply to an insurer incorporated in British India whose share capital to the extent of one third is owned by or the members of whose Governing Body to the extent of one-third consists of, individuals domiciled elsewhere than in British India or the United Kingdom

Notes—Mr Sen in paragraph 110 of his Report says I would therefore recommend that provisions should be made in the statute to the following effect —

(a) that all Indian companies should invest at least 40 per cent of their funds in Government of India securities and at least 20 per cent in securities as mentioned in section 20 of the Indian Trust Act Sub section (1) as originally drafted gave effect to that recommendation This section underwent some change in the hands of the Select Committee But the Legislature made a thorough change in every respect

Statement of investments of assets

28 (1) Every insurer registered under this Act carrying on the business of life insurance, not being a provident society, shall twice in every year, namely, within fourteen days of the 30th day of June and within fourteen days of the 31st day of December, submit to the Superintendent of Insurance a statement showing as at the said dates the assets held invested in accordance with section 27 and such statement shall be certified by the principal officer of the insurer

(2) The Superintendent of Insurance shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets invested in compliance with section 27 and the insurer shall comply with all requisitions made by the Superintendent in that behalf

Prohibition of loans

29 No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, managing agent, actuary auditor or officer of the insurer if a company, or where the insurer is a firm, to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent, actuary, officer or partner

Provided that nothing herein contained shall apply to loans made by an insurer to a banking company

Provided further that every existing loan to any director, manager, managing agent, auditor actuary, officer or partner, notwithstanding any contract to the contrary, shall be repaid within one year from the commencement of this Act, and in case of default, such defaulting director manager managing agent, auditor, actuary, officer or partner shall cease to hold office on the expiry of one year from the commencement of this Act

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company

Notes—Mr Sen in his report recommended that no portion of the funds of the company should be given as loans to the directors, manager or officer or managing agent of the

company, and where the insurance company is a firm to any partner of such firm except on the security of policies held in the company and that no loans shall be given to any company or firm in which any director or officer is directly or indirectly concerned —*Vide Sen's Report para 110* (b) (2 and 3)

Liability of directors etc for loss due to contravention of sections 27 and 29

30 If, by reason of a contravention of any of the provisions of section 27 or section 29, any loss is sustained by the insurer or by the policy-holders every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss

Assets of insurer how to be kept

31 None of the assets in British India of any insurer shall, except in the case of deposits made with the Reserve Bank of India under section 7 or in so far as assets are required to be vested in trustees by sub-section (4) of section 27, be kept otherwise than in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual

Limitation on employment of managing agents and on the remuneration payable to them

32 (1) No insurer shall, after the commencement of this Act, appoint a managing agent for the conduct of his business

(2) Where any insurer engaged in the business of insurance before the commencement of this Act employs a managing agent for the conduct of his business, then, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913,* and notwithstanding anything to the contrary contained in the articles of the insurer, if a company, or in any agreement entered into by the insurer, such managing agent shall cease to hold office on the expiry of three years from the commencement of this Act and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent

(3) After the commencement of this Act, notwithstanding anything contained in the Indian Companies Act, 1913,* and notwithstanding anything to the contrary containd in any agreement entered into by an insurer or in the articles of association of an insurer being a company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousand rupees per month in all including salary and commission and other remuneration payable to and receivable by him, for his services as managing agent

Notes —This section is intended to bring about the abolition of managing agents —*Notes on Clauses*

INSPECTION

Power of Superintendent of Insurance to order inspection.

33 (1) If the Superintendent of Insurance has reason to believe that the interests of the policy-holders of an insurer are in danger or that an insurer is unable to meet his obligations or has made default in complying with any of the provisions of this Act, or

* VII of 1913

that an offence under this Act has been or is likely to be committed by an insurer or any officer of an insurer, or if he receives a requisition in this behalf signed by shareholders of an insurer being a company not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or if he receives a requisition in this behalf signed by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees and supported by an affidavit, he may after giving notice to the insurer and giving him an opportunity to be heard, appoint an auditor or actuary or both, not being an auditor or actuarer in the employ of the insurer, to investigate the affairs of the insurer, or may himself make such investigation

(2) The Court may, on the application of an insurer and after giving notice to and hearing the Superintendent of Insurance, forbid such action by the Superintendent if the insurer satisfies the Court that it is unnecessary in the circumstances

(3) The results of any investigation made under this section shall be embodied in a report of which one copy shall be lodged with the Superintendent of Insurance and one copy shall be furnished to the insurer, and a copy of such report shall be furnished to the policy-holders who have sent a requisition for such an investigation

(4) The Superintendent of Insurance may require the insurer to comply within a time to be specified by him (not being less then fifteen days from the receip of the notice by the insurer) with any directions he may issue to remedy defects disclosed by such inspection

(5) If as a result of any investigation made under this section, the Superintendent of Insurance is of opinion that it is necessary in the interests of the policy-holders that the business of the insurer should be wound up, or if the insurer fails to comply with any directions issued under sub section (4) the Superintendent may, after giving notice to the insurer and giving him an opportunity to be heard apply to the Court to have the business of the insurer wound up

[illegible] port Mr Sen in the [illegible] to the power (with [illegible] to appoint a duly [illegible] ks and documents [illegible]

provisions of the Act

(iii) or upon requisition being made by share holders being in number not less than 1/10th of the whole number of persons entitled for the time being in the list of share holders or of 10 or more policy holders owning policies of an aggregate value of not less than Rs [illegible]0 000

(ii) that there is reasonable cause to believe that an offence under the Act has been or is likely to be committed by a company or any officer thereof' The Select Committee [illegible] section observed We have increased [illegible] the Superintendent of Insurance [illegible] and have made a corresponding [illegible] —*Report of the Select Committee*

34 When any investigation is made in pursuance of section 33 the provisions of section 140 of the Indian Companies Act, 1913,* shall apply for the purposes of such investigation as they apply to an investigation made in pursuance of section 138 of that Act, and all expenses of and all incidental to such investigation shall be defrayed by the insurer.

Powers of investigator

Notes —See Clause 31 (2) of 1925 Bill and section 37 (2) of Act VI of 1912.

AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS

35 (1) No life insurance business of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2 shall be transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and sanctioned by the Court having jurisdiction over one or other of the insurers concerned

Amalgamation and transfer of insurance business

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme

(3) Before an application is made to the Court to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therfor shall, at least two months before the application is made, be sent to the Central Government, and certified copies of the following documents shall be furnished to the Central Government and shall during the two months aforesaid be kept open for the inspection of the members and policy holders at the principal and branch offices and chief agencies of the insurer concerned, namely —

(*a*) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer,

(*b*) statements of the assets and liabilities of the insurers concerned in such amalgamation or transfer, and

(*c*) the actuarial or other reports on which the scheme was founded including a report by an independent actuary on the ... sfer

... under sub-section (*3*) is made to the ... m the commencement of this Act, the Court may, on application extend for the insurer whose business is to be transferred to or amalgamated with the business of another insurer, the time allowed for registration and for the payment of the first instalment of the deposit under sections 3 and 7 for such period not exceeding nine months as the Court may think fit.

... Mr Sen s Report and clauses 13 ... cast to some extent in the l ght ...

... provisions which ... of companies In ... provisions in this ... mation should be ... such sanction is ... s but also to the

* VII of 1913

policy holders to come before the Court and make their submissions, if any In the Bill of 1925 provisions were made on this subject in sections 40 41, 42 and 43 I have carefully gone into those provisions and in my opinion they ought to be adopted in the Act I therefore recommend that so for as transfers and amalgamations are concerned, the new Act should adopt the provisions of sections 40 to 43 of the Bill of 1925 —*Vide Mr Sen s Report, paragraph 1'51*

Section 35 —Section 35 is based on sections 40 and 41 of the Bill of 1925 Sections 40 and 41 of the Bill run as follows

"**40** *Amalgamation* **or** *transfer* —No Life Insurance Company constituted in British India shall amalgamate with another insurance company or transfer its life insurance business or any portion thereof to another insurance company, unless the amalgamation or transfer is sanctioned by the Court

"41 (1) *Statements required before amalgamation* —Before an application is made to the Court to sanction the amalgamation of two or more insurance companies of which any one is a life insurance company constituted in British India or the transfer of any life insurance business of one such insurance company to another insurance company, notice of the intention to make the application together with a statement of the nature of the

l of the reason therefor shall at least
the Governor General in Council and
is resident in British India and the
vernor General in Council and shall

during the two months aforesaid be kept open for the inspection of members and policy holders at the principal and branch offices and agencies of the insurance companies concerned namely —

(*a*) a draft of the agreement or deed made under which it is proposed to effect the amalgamation or transfer

(*b*) certified copies of statements of the assets and liabilities of the insurance companies concerned in such amalgamation of transfer , and

(*c*) certified copies of the actuarial or other reports, including a report by an independent actuary, on the proposed amalgamation or transfer

(*2*) A notice required by sub section (*1*) to be sent to a policy holder may be addressed and sent to the person to whom the notices respecting the policy are usually sent and any notice so addressed and sent shall be deemed to be a notice to the holder of the policy "

Reconstruction and amalgamation —Neither reconstruction nor amalgamation has any definite legal meaning Each word is a commercial and not a legal term and even as a commercial term has not exact definite meaning Where an undertaking is being

to an outsider,
s, with a view
and it is none
or resuscitated
or shareholders

in the transferee company, any the liabilities of the transferor company are not taken over by the transferee company. To constitute 'amalgamation' there must be a blending of substantially two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders *in the company which holds the blended undertakings and there may be amalgamation* either by the transfer of two or more undertakings to a new company or by the transfer of one or more undertakings to an existing company *In re South African Supply and Cold Storage, Wild v Same company* (1901) 2 Ch 268

36 When any application such as is referred to in sub-section (*3*) of section 35 is made to the Court, the Court shall cause, if for special reasons it so directs, notice of the application to be sent to every person resident in British India or in an Indian State who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom it considers entitled to be heard, may sanction the arrangement, if it is satisfied that no sufficient objection to the arran ent has been established

Sanction of amalgamation and transfer by Court

Notes —Policy holders who have taken o

for a transfer *In re Hearts of Oak Life* application to the Court to sanction an agreement for the amalgamation of two assurance companies the Court will in a proper case dispense with the transmission to the policy holder of the reports and documents referred to in section 13 (3) of the Assurance Companies Act 1909 and will direct advertisements to be issued in lieu thereof *Britannic Assurance Co In re* The Court may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established *Empire Guarantee etc Petition* (1911) 2 S L T 209 Where an insurance company transfers its life business to another company and the transfer is sanctioned by the Court under the Assurance Companies Act 1909 s 13 the effect is to discharge the transferring company from all liability to its policy holders and the Court can order payment out of the deposit to the transferring company *United British Insurance Co) In re* 98 L J 44 was authorized to transfer its business articles and it had entered into an a on a petition by the transferor company t *United British Co In re* 142 L T 12=

37 Where an amalgamation takes place between any two or more insurers, or where any business of one insurer is transferred to another, whether in accordance with a scheme confirmed by the Court or otherwise, the insurer carrying on the amalgamated business or the insurer to whom the business is transferred, as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer, furnish to the Central Government—

Statements required after amalgamation and transfer

(*a*) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected, and

(*b*) a declaration signed by every insurer concerned or in the case of a company by the chairman and the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer, and

(*c*) where the amalgamation or transfer has not been made in accordance with a scheme confirmed by the Court—

(*i*) certified copies of statements of the assets and liabilities of the insurers concerned and

(*ii*) certified copies of the actuarial or other reports upon which the agreement or deed was founded

ASSIGNMENT OR TRANSFER OF POLICIES AND NOMINATIONS

38 (1) A transfer or assignment of a policy of life insurance, whether with or without consideration may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment

Assignment and transfer of life insurance policies

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but shall not be operative as against an insurer and shall not confer upon

the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment has been delivered to the insurer at his principal place of business in British India by or on behalf of the transferor or transferee

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy, and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee on payment of a fee not exceeding one rupee grant a written acknowledgment of the receipt of such notice, and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates

(5) From the date of the receipt of the notice referred to in sub-section (2) the insurer shall recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings

(6) The rights and remedies of the assignee or transferee of a policy of life insurance existing prior to the commencement of this Act shall not be affected by the provisions of this section

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person
life of the policy-
or survivors of a nu

Notes —This section as originally framed on paragraph 173 A of Mr Sen s Report which runs as follows —

168 *Provisions regarding assignment of policies of life insurance* —The right to moneys due under a policy of life insurance has been regarded as an actionable claim and the matter has been dealt with as such in the Transfer of Property Act Sections 123, 130 and 135 of the Act govern the case of transfers and assignments of claims in action

case of *Sethna* v *Hemmingway* reported in 38 B 618 the delivery of a banker s receipt with a letter to the bank directing payment was held to be only a pay order

"170 In England to obviate such difficulties in the case of assignments of policies the Legislature has in the Policies of Assurance Act 1867, specified the form which or the equivalent of which is to be used In my opinion a similar provision should be made in India to obviate difficulties

171 Then again under the Transfer of Property Act in order to bind the company express notice of a transfer has to be given Many cases occur in which notices are not given to the insurance companies in these cases they are often put not only to expenses but also to difficulties specially if there is more than one clai mant and the assignment or transfer is challenged

"172 In order to prevent the possibility of any such difficulty in matters relating to or arising out of assignment of policies the Policies of Assurance Act has provided that no assignee or other person claiming under him will be entitled to sue the company until a written notice of that date and the purport of the assignment has been given to the company To ensure promptness in the matter of these notices the Act has also provided that the date on which
will regulate the priority as between th
made to the Government of India by a v
doing business in India that provision
Assurance Act of 1867 should be made in

adoption of the English provisions in
protection of the insurance companies
ovisions on the lines of the English Act

173A After careful consideration I recommend that the Act should make provisions on more or less the following lines —

(1) That a transfer or an assignment of a policy of life insurance absolutely by way of gift or otherwise or for the purpose of securing an existing or a future debt must be made either by endorsing on the back of the policy or by a separate instrument to be executed by the insured in the words or to the following effect viz —

I, A B of in consideration of do hereby assign unto C D of his Executors Administrators and Assignees the (written) policy of assurance granted etc , (here describe the policy)

In witness etc

(2) That every such endorsement or instrument must be signed by the transferor assignor or his duly authorised agent and must be attested by at least one witness

(3) That the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument but shall not confer on the transferee or assignee therein named his executors administrators or assignees, any right to sue for the amount of such policy or the monies assured or secured thereby until the written notice of the transfer or assignment shall have been given to the company liable under such policy at their principal place of business

(4) That every company to whom notice shall have been given of any transfer or *assignment of any policy under which they are liable* shall enter the fact thereof in the register of policies to be kept in terms of the Act wherein shall be mentioned the date of the assignment and the name of the transferee or assignee

(5) That every transferee or assignee giving notice to a company of the assignment shall be entitled upon payment of a fee not exceeding Re 1 to an acknowledgment in writing from the company of the receipt of such notice and every such written ... the company of their having

insurer will be entitled to
n entitled to the benefits
under the policy

(7) That the assignee or transferee shall be subject to all the liabilities and equities to which the policy holder

(8) That any perso
to a policy of life ass
recovery thereof in his o

Committee reports We have made a necessary insertion in sub clause *(1)* We have

provided in sub clause (2) that the notice required by the sub clause must be given at the principal place of business in India. We have added a new sub clause (6) to safeguard transfers made before the present legislation is passed and a new sub clause (7) validating certain conditional assignments.

39. (1) The holder of a policy of life insurance may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

Nomination by policy holder

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be.

(3) The insurer may charge a fee not exceeding one rupee for registering any such endorsement and shall furnish to the policy-holder [illegible] ing done so

[illegible] a policy made in accordance with [illegible] cel a nomination

[illegible] es for payment during the lifetime of the policy-holder or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the policy-holder, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874,* applies.

Notes—This section is based on recommendation in para 194 of Mr Sen's Report. In that para Mr Sen recommends as follows—

[illegible] a prior to the time when the policy

* III of 1874

the policy The Select Committee in making certain amendments said We have supplied an omission in sub-clause (6) and by a new sub-clause (7) we have made a necessary provision excluding from the operation of the clause insurances by a married man for the benefit of his wife or children which are subject to the provisions of Act III of 1874 —*Report of the Select Committee*

Commission and Rebates and Licensing of Agents

Prohibition of payment by way of commission or otherwise for procuring business

40 (1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent licensed under section 42 or a person acting on behalf of an insurer who for the purposes of insurance business employs licensed insurance agents

(2) No insurance agent licensed under section 42 shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding in the case of life insurance business forty per cent of the first year s premium payable on any policy or policies effected through him and five per cent of a renewal premium or, in the case of business of any other class, fifteen per cent of the premium

Provided that insurers, in respect of life insurance business only, may pay during the first ten years of their business to their insurance agents fifty-five per cent of the first year s premium payable on any policy or policies effected through them and six per cent of the renewal premiums

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission to an insurance agent or to his representative after his decease in respect of insurance business effected through him before the said date

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Prohibition of rebates

41. (1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to effect or renew an insurance in respect of any kind of risk relating to lives or property in India any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to one hundred rupees unless the default is made by a person effecting or renewing a policy in which case he shall be punishable with fine which may extend to fifty rupees only

42 (1) The Superintendent of Insurance or an officer authorised by him in this behalf shall in the prescribed manner and on payment of the prescribed fee which shall not be more than one rupee, issue to any individual making an application under this section and not suffering from any of the disqualifications hereinafter mentioned a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business

Licensing of insurance agents

(2) A licence issued under this section shall entitle the holder to act as

(3) on the 31st day of Mai s not suffer from any of the disqualifications hereinafter mentioned, be renewed from year to year on payment of a fee of one rupee

(4) The disqualifications above referred to shall be the following —

(a) that the person is a minor

(b) that he is found to be of unsound mind by a Court of competent jurisdiction,

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating by a Court of competent jurisdiction,

(d) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in affairs of an insurer it has been has knowingly participated in or of misrepresentation against an insurer or an assured

(5) If it be found that an insurance agent suffers from any of the foregoing disqualifications without prejudice to any other penalty to which he may be liable, the Superintendent of Insurance shall and if the agent has knowingly contravened any provision of this Act may, cancel the licence issued to the agent under this section

43 (1) *Every insurer and every person who acting on behalf of* an insurer employs licensed insurance agents shall maintain a register showing the name and address of every licensed insurance agent appointed by him and the date on which his appointment began and the date if

Register of insurance agents

issued under section 42 punishable with fine which may extend to fifty rupees, and any insurer who or any person acting on behalf of an insurer who, appoints as an insurance agent any individual not so licensed, or transacts any insurance business in India through any such individual, shall be punishable with fine which may extend to one hundred rupees

(3) The provisions of sub-section (2) shall not take effect until the expiry of six months from the commencement of this Act

44 Notwithstanding anything to the contrary in a contract between any person and an insurance agent licensed under section 42 forfeiting or stopping payment of renewal commission to *such insurance agent no such person shall in respect of life insurance*

Prohibition of cessation of payments of commission

business done in India refuse payment to an insurance agent of commission on renewal premiums due to him under the agreement by reason only of the termination of his agreement except for fraud

Provided that such agent has served such person continually and exclusively for at least ten years, and provided further that, after his ceasing to act as agent, he does not directly or indirectly solicit or procure insurance business for any other person

SPECIAL PROVISIONS OF LAW.

Policy not to be called in question on ground of mis statement after two years

45 No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured or in any other document leading to the issue of the policy, was inaccurate or false, *unless the insurer shows that such statement was on a material matter* and fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false

Notes —In adding this new section the Select Committee observed We have inserted ... a policy ... id that ... if the ... ars he ... cm the ... state ... *Report*

Application of British Indian law to policies issued in British India

46 The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in British India after the commencement of this Act shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto to receive payment in British India of any sum secured thereby and to sue for any relief in respect of the policy in any Court of competent jurisdiction in British India , and *if the suit is brought in British India* any question of law arising in connection with any such policy shall be determined according to the law in force in British India

Notes —Section 46 is based in paragraph 306 of Mr Sen s Report which runs as ... have been made that such a provision ... in the absence ... passed by foreign ... of protection to ... notwithstanding ... ovision in some ... should be made

... of this Act shall ... to the contrary ... art of competent ... policy shall be

47 (1) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount the insurer shall before the expiry of nine months from the date of the maturing of the policy apply to pay the amount into the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise

Payment of money into Court

(2) A receipt granted by the Court for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount

(3) An application for permission to make a payment into Court under this section shall be made by a petition verified by an affidavit signed by a principal officer of the insurer setting forth the following particulars, namely —

(a) the name of the insured person and his address ,

(b) if the insured person is deceased the date and place of his death

(c) the nature of the policy and the amount secured by it

(d) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received

(e) the reasons why in the opinion of the insurer a satisfactory ... ent of the amount and ... may be served with notice ... e amount paid into Court ... shall not be entertained by the Court if the application is made before the expiry of six months from the death of the insured or the maturing of the policy by survival

(5) If it appears to the Court that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be paid into Court and shall invest the amount in Government securities pending its disposal

(6) The insurer shall transmit to the Court every notice of claim received after the making of the application under sub section (3) and any payment required by the Court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into Court shall as to the costs of the application under sub section (3) be borne by the insurer and as to any other costs be in the discretion of the Court

(7) The Court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into Court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claimant

(8) The Court shall decide all questions relating to the disposal of claims to the amount paid into Court

following lines

48 (1) Where the insurer is a company incorporated under the Indian Companies Act, 1913,* and carries on the business of life insurance, not less than one-fourth of the whole number of the directors of the company shall be persons having the prescribed qualifications and holding policies of life insurance issued by the company, and shall be elected to the Board of Directors of the company in the prescribed manner by the holders of policies of life insurance issued by the company.

Directors of insurers being companies

(2) This section shall not take effect until the expiry of one year from the commencement of this Act

Notes —"We have decided by a majority that provision should be made for the representation of policy holders of the insurer on the Board of Directors where the insurer is a company and carries on life insurance business We consider that these directors should be themselves policy holders and should be elected by the policy holders and that they should not be less in number than one fourth of the Board The method of election and qualification of directors and others should be prescribed by rules made under the rule making clause of the Bill —*Report of the Select Committee*

49 No insurer, being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2 who carries on the business of life insurance shall in respect of such life insurance business declare or pay any dividend to shareholders or any bonus to policy holders except out of a surplus ascertained as the result of an actuarial valuation of the assets and liabilities of the insurer

Restriction on dividends and bonuses

Notes — We have prohibited the payment of dividends or bonuses except out of a surplus ascertained after actuarial valuation —*Report of the Select Committee*

50 An insurer shall, within three months of the lapsing of a policy of life insurance, give notice to the policy-holder informing him of the options available to him

Notice of options available to *the assured on the lapsing of* a policy

51 Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith

Supply of copies of proposals and medical reports

52 No insurer shall after the commencement of this Act begin or after three years from that date continue to carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits

Prohibition of business on dividing principle

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary

* VII of 1913

additions to the sums insured or as immediate cash bonuses or otherwise

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withhold from distribution a sum of not less than forty per cent of the premiums received during each year after the commencement of this Act in which such business is continued so as to make up the amount required for investment under section 27

WINDING UP

Winding up by the Court

53 (1) The Court may order the winding up in accordance with the Indian Companies Act, 1913,* of any insurance company and the provisions of that Act shall, subject to the provisions of this Chapter, apply accordingly

(2) In addition to the grounds on which such an order may be based the Court may order the winding up of an insurance company—

(a) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number *than one-tenth of the whole body of shareholders and holding not* less than one-tenth of the whole share capital or by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees , or

(b) if the Superintendent of Insurance, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely —

(i) that the company has failed to deposit or to keep deposited with the Reserve Bank of India the amounts required by section 7,

(ii) that the company having failed to comply with any requirement of this Act has continued such failure for a period of three months after notice of such failure has been conveyed to the company by the Superintendent of Insurance,

(iii) that it appears from the returns furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is insolvent or

(iv) that the continuance of the company is prejudicial to the *interests of the policy-holders*

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winding up namely —(a) compulsory winding up by the Court (b) voluntary winding up without the intervention of the Court and (c) voluntary winding up under the supervision of the Court

graph 150 of Mr Sen s Report with

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now in existence and which are

* VII of 1913

coming into existence are incorporated under the Indian Companies Act which provides an elaborate procedure for the winding up of companies In my opinion the following matters require to be cons dered *viz* —

(*a*) Additional circumstances under which an insurance company may be wound up by the Court

(*b*) Provisions as to valuation of liabilities ,
(*c*) The disposal of the surplus assets
(*d*) Special powers of the Court
(*e*) Winding up of subsid ary companies ;
(*f*) Provisions for partial winding up

I — 11 ns made hereafter the procedure
I applicable to the winding up of
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150 *Circumstances under which a co npany can be wound up by a Court* —Bes des what is provided for in the Indian Companies Act the Act should also provide for a petition being presented by a policy holder or a shareholder provided he satisfies the Court that there is a *prima facie* case Provisions must also be made for the Superintendent to present a petit on for the winding up of an insurance company in certain cases *e g* default in complying with the provisions of the statute and so on —*Sen s Report paragraphs* 149 and 150

Three kinds of winding up —Insurance companies which have been incorporated under the Indian Companies Act VII of 1913 may be wound up under that Act either (i) by the Court (ii) voluntarily or (iii) subject to the supervison of the Court But voluntary winding up of an insurance company must be subject to the provis on of s 54 (*infra*)

Sub section (1) —Section 162 of the Indian Companies Act of 1913 lays down the circumstances under which a company registered under the Indian Companies Act may be wound up by Court Under those circumstances an insurance company registered under the Indian Companies Act may also be wound up by Court But the Court should exercise power under that section only on strong grounds 86 Ind Cas 135 48 M 489 see also 39 B 16 31 P R 1914 39 B 47 39 Ind Cas 570 39 A 331 In the absence of fraud in the conception of a company or where it is not one whose substratum is gone the mere fact that the applicants apprehend a loss from a further working is no ground for winding up the company under that section 39 A 331=15 A L J 193=39 Ind Cas 570 The power to wind up a company should not be used unless there is very strong ground for it because the Indian companies are governed by a majority of their own members and where there is a domestic tribunal with powers to decide upon a question it should if possible be left to the domestic tribunal *Ibid* see also 59 Ind Cas 524—13 Bur L T 51 Where the undisputed f that the affairs of the company are in a moribund that it is unable to pay its debts statutory demand ma with the provisions of section 162 (*1*) of the Companies the company has not got any cash in hand and employees including those who had been engaged

petitioners are *prima* I R 1930 Lah 777= g agents or the *fact* not *per se* a ground for demonstrate that the company is insolvent that its affairs have been mismanaged from the very outset that debts have been recklessly incurred and never paid that the provisions of the Companies Act as regards the maintenance and publication of true balance sheets have been deliberately contravened and the information necessary to keep the share holders cognizant company *Electric* Judge in uidation on of the

so there is a strong interest preference shares *Davis*

Winding up by Court where there is a special resolution —A company may be wound up by the Court, if the company has by special resolution resolved that the company be

But the mere fact that a Court voted in favour of by the Court compulsorily inding up especially where there is no valid resolution for voluntary winding up 49 C 399=A I R 1922 Cal 365=69 Ind Cas 241

Winding up for failure to file statutory report etc —A company may be wound up by the Court if default is made in filing the statutory report or in holding the statutory meeting *Vide s 162 clause (2)* of the Companies Act

Winding up where company does not commence business etc —A company may be

improbability of ... 17 L T 14 *Malrel and ... rough Assembly*

Winding up when numbers of members reduced —Where the number of members is reduced to less than seven a winding up order may be made *Nassau Phosphate In re* 2 Ch 610, *Sanderson's Patents* 40 L J Ch 519

Winding up if the company is unable to pay its debts —Section 163 of the Companies Act states when the company shall be deemed to unable to pay its debts If a company is unable to pay its debts it may be wound up by the Court [*Vide s 162 clause (e) of the Companies Act of 1913*] A creditor's application for winding up must be dismissed where a company has a *bona fide* defence to its claim A I R 1925 Rang 128=3 Bur L J 326=84 Ind Cas 1021 see also *Jan Bazar v Manna Estate* 58C 716=A I R 1931

matter of right for the winding up of the company A I R 1923 Mad 265=106 Ind Cas 423 see also 23 C W N 814 58 Ind Cas 561 *Brighton Club* 35 Beav 204, *London and Paris Banking* 19 Eq 444 Interference under this clause is proper ... to meet existing liabilities 123 (128) For a d the title of the e made for a debt at something else insolvent it may 1933 Lah 301

...nding up of a company is the closing the company should be distributed *and fair manner the Court in some* suspended temporarily but for no

wound up by the Co... to an end and no lo... body of creditors compulsory liquida...

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substance The unsecured creditors are entitled to ask the Court to pass a winding up order so that the question whether the debentures were bona fide issued for value may be enquired into and they may before it is too late be able to realize if not the whole at least a portion of the unsecured debts *Henley s Telegraph Works* v *Gorakhpur Electric Supply* 166 Ind Cas 238—1937 A L R 4=A I R 1936 All 840

When winding up is just and equitable —A company may be wound up by the Court if it is of opinion that it is just and equitable that the company should be wound up [*Section 162 clause VI of the Indian Companies Act 1913*] No general rule can be laid down as to the nature of the circumstances which have to be borne in mind in considering whether the case comes within the phrase just and equitable for the purpose of winding up The decisive question must be the question whether at the date of the presentation of the winding up petition there is any reasonable hope that the object of trading at a profit with a view to which the company is framed, can be attained *Davis & Co* v *Brunswick* 161 Ind Cas 539—A I R 1936 P C 114 (P C) There is obviously a great difference between a question of positive fact such as the pecuniary position of a trading company at a particular date and a question of the prospects of such a company in the future a matter which must depend on all sorts of views as to the state of world trade the confidence of the public, the price at which articles can be sold a matter which depends very largely upon the number of such sales and infinity of other considerations very difficult either to summarise or to define It is not the function of a Court to determine such a matter on its own views as to probable success or failure but to form the best opinion it can upon the evidence given by persons with a practical knowledge of the trade in question and the local conditions where these a
a limited concern was leased to a co
another at large profits and numerous
company for recovering the dividends
that the company should be wound up
240=129 Ind Cas 872—53 M 23—52 M
783 *Subapathy* v *Subapathy* 48 M 448 The reason in clause (6) is not necessarily *ejus lem generis* with reasons given in clauses (1) to (5) 48 M 448—86 Ind Cas 135

Where the directors exercise a dominating influence on the management of the company and the managing director is able to outvote the minority of the shareholders and retain profits and shareholders do not receive a copy of the balance sheet and dividends are not regularly ... ding up application and to call up ... In *Ex parte Spackman*, 1 H & T ... in order to justify a Court to take ac ... in the ... ould no ... at the concern ought to be wound up See also 600 *Melson & Co* (1906) 1 Ch 841 *Net bridge* v *John* (1924) A C 783 *Blenot Manufacturing*

37 T L R 953

Lack of confidence in the c
management being held in one
shareholders and monopolise the
ordering winding up 48 M L
Ind Cas 914 Court can in e
a majority of the shareholders
ited by the application of the *ejus*
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acing profit there should be no
8=114 Ind Cas 849 Where a
person who is adjudica
he has 90 per cent c

the order may be

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case *Ripon* v *Gopal* 36 C W N 5
fact that the managing director had a prepon

derating voice in the company by reason of his owning or controlling a large number of shares or that the dividends had not been paid regularly, was of itself no reason for winding up the company *Ibid*

When substratum is gone —To bring a company within the ' just and equitable ' clause it must be shown that the *substratum* of the company has gone or that a dead lock has arisen in the sense that it is not possible for the company to carry out the objects for which it was formed *Janbazar Manna Estate* 58 C 716=133 Ind Cas 321=A I R 1931 Cal 692, see also *Haven Gold Mining Co* 20 Ch D 151 *German Date Coffee Co, In re*, 51 L J Ch 564=20 Ch D 169 *In re Lensbye Tobacco*, (1916) 1 Ch 426, *In re, American Insurer*, (1916) 1 Ch 750, *Loch v John* (1924) A C 763 *Mudaliar* v. *Bengal*, 47 C 451, *Ind Exch Gold Mining* 61 L T 785 see also *Symington* v *Symington*, 8 P 121 But in such a case the petition must be made in good faith *M Donall In re* 14 T L R 201 But it is not an abandonment of the objects of a company if where being established for three or four purposes it abandons one and carries on the others provided such abandonment does not alter the fundamental principles of the company *Norwegian Titanis* 35 Beav 223

Fraud and illegality —In order to prevent fraud on the part of the director by [illegible] sion with creditors Court can order compulsory [illegible] s *Bank* 158 Ind Cas 816=A I R 1935 Lah [illegible] uilty of an offence under s 291 A of I P Code, [illegible] is illegal the company should be wound up [illegible] J 792=36 L W 610=1932 M W N 901=63 [illegible] e mere fact of there being fraud in the promotion [illegible] sentation in the prospectus would not itself be [illegible] ake a winding up order *Haven Gold* 20 Ch D [illegible] y initiated to carry out a fraud should be wound [illegible] Ch 406=66 L J Ch 290 see also *London and County Coal*, L R 3 Eq 355

Debenture in excess of the value of assets —Where the assets of a company are not sufficient to pay the debenture holders and a debenture holder s action has been commenced the Court will not on the petition of an outside creditor make a winding up order in opposition to the wishes of the majority of the creditors and debenture holders *Edgbaston Brewery Co* 68 L T 311

Issue of shares at a discount —Where a company has issued shares at a discount a fully paid up shareholder is not entitled to a winding up order even though such an order might result in surplus divisible amongst the shareholders *Pioneers of Mashonaland*, (1893) 1 Ch 731=62 L J Ch 507

Misconduct of liquidator —Misconduct by a liquidator is not a ground for a compulsory order to wind up There should be an application made to remove him *London and Mediterranean Banking* 15 L T 153

Misconduct of directors —Misconduct on the part of the directors of a company though sufficient to render them liable upon a suit by the shareholders is no ground for winding up the company when it is not insolvent and there is still a reasonable prospect of the company being succesfully carried *Anglo Greek Steam* 35 Beav 399 see also *Bulchy Ilwem Co In re* 17 L T 235 *National Live Stock* 26 Beav 153, *Pocock, Ex parte* 1 De G & Sm 731

54 Notwithstanding anything contained in the Indian Companies Act, 1913,* an insurance company shall not be wound up voluntarily except for the purpose of effecting an amalgamation or a re-construction of the company, or on the ground that by reason of its liabilities it cannot continue its business

Voluntary winding up

Notes —This section has been inserted to safeguard the interest of the policy holders — *Notes on Clauses*

55 (1) In the widing up of an insurance company or in the insolvency of any other insurer the value of the assets and the liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator or receiver in insolvency thinks fit, subject, so far as

Valuation of liabilities

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* VII of 1913

applicable, to the rule contained in the Sixth Schedule and to any directions which may be given by the Court

(2) For the purposes of any reduction by the Court of the amount of the contracts of any insurance company the value of the assets and liabilities of the company and all claims in respect of policies issued by it shall be ascertained in such manner and upon such basis as the Court thinks proper having regard to the rule aforesaid

(3) The rule in the Sixth Schedule shall be of the same force and may be repealed, altered or amended as if it were a rule made in pursuance of section 246 of the Indian Companies Act, 1913 * and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies

Notes—Section 55 is based on paragraph 158 of Mr Sen s Report Mr Sen in paragraph 153 of his report says In the matter of liabilities the liquidator should in ascertaining the same observe the rules laid down by the Clauson Committee in their report as to valuation of liabilities The provisions should be on a line with those contained in section 16 of the draft Bill submitted with their report and the rules enumerated in Schedule VII of the said draft Bill as far as practicable

Application of surplus assets of life insurance fund in liquidation or insolvency

56 (1) In the winding up of an insurance company and in the insolvency of any other insurer the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life insurance business

(2) In the winding up of an insurance company carrying on the business of life insurance or in the insolvency of any other insurer carrying on such business where any proportion of the profits of the insurer was before the commencement of the winding up or insolvency allocated to policy-holders, if when the assets and liabilities of the insurer have been ascertained there is found to be a surplus of assets over liabilities (hereinafter referred to as a *prima facie* surplus) *there shall be added to the liabilities of the insurer* in respect of the life insurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to shareholders and policy-holders as was allocated to policy-holders *during the ten years immediately preceding* the commencement of the winding up and the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition

Provided that—

(a) if in any case there has been no such allocation or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct, and

* VII of 1913

(b) for the purpose of the application of this sub-section to any case where before the commencement of the winding up or insolvency a proportion of such profits as aforesaid of a branch only of the life insurance business in question has been allocated to policy-holders, the value of the assets and liabilities of the insurer in respect of that branch shall be separately ascertained in like manner as the value of his assets and liabilities in respect of the life insurance business was ascertained, and the surplus so found, if any, of assets over liabilities shall, for the purpose of determining the amount to be added to the liabilities of the insurer in respect of the life insurance business be deemed to be the *prima facie* surplus

Notes — This section reproduces clause 17 of the Clauson Bill sub-clause (2) which was already put in Act VI of 1912 as section 20A with the omission of references to continuous disability business and capital redemption business and the omission of clause (b) of the proviso —*Notes on Clauses* In adding clause (b) to the proviso the Select Committee observes We have inserted clause (b) of the proviso contained in sub-clause (2) of clause 17 of the Clauson Bill on which this clause is founded —*Report of the Select Committee*

Winding up of secondary companies

57 (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company) then if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court be the commencement of the winding up of the secondary company

(3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company or as near thereto as circumstances admit

(4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary the Court shall not direct the secondary company to be wound up unless after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up the Court is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable

(5) An application may be made in relation to the winding up of any secondry company in conjunction with the principal company by any creditor of, or person interested in the principal or secondary company

(6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the Court may deal with any number of such companies *together or in separate groups as it thinks most expedient upon the* principles laid down in this section

Notes —This section is taken from section 23 of Act VI of 1912 which again was based *on s 16 of the English Assurance Companies Act of 1909 In Lancashire Plate Glass* [illegible]

insurance does not amount to a transfer of assurance business so as to constitute o e company a subsidiary company and the other a principal company within s 16 of the Assurance Companies Act 1909

58 (1) If at any time *it appears expedient that the affairs of* an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act

Schemes for partial winding up of insurance companies

(2) Any scheme prepared under this section shall provide for the allocation and distribution *of the assets and* liabilities of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding up) for any future rights of every class of policy-holders in respect of their policies and for the manner of winding up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme

(3) The provisions of this Act relating to the valuation of liablities [illegible] and to the application of surplus [illegible] or insolvency shall apply [illegible] f a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurai [illegible] under this section may apply with the [illegible] f the provisons of the Indian Companies [illegible]* [illegible] winding up of companies

(4) An order of the Court confirming a scheme under this section whereby the memorandum of a company is altered with respect to *its object shall as respects the alteration have effect* as if it were an

* VII of 1913

order confirmed under section 12 of the Indian Companies Act, 1913,* and the provisions of sections 15 and 16 of that Act shall apply accordingly

[illegible]

is quite possible to carry on the business of that company in particular classes while it would be desirable to wind up the business relating to others There is no provision in the existing Act for partial winding up and this difficulty was noticed by the Clauson Committee, who made a very excellent suggestion for avoiding difficulties of this nature and to provide for winding up of portions of a company's business

59. In the winding up of an insurance company and in the insolvency of any other insurer the liquidator or assignee as the case may be shall apply to the Court for an order for the return of the deposit made by the company under section 7 and the Court shall on such application order a return of the deposit subject to such terms and conditions as it shall direct

Return of deposits

Notes —This section reproduces clause 5 of the 1925 Bill —*Notes on Clauses*

60 In the winding up of an insurance company for the purposes of a cash distribution of the assets and in the insolvency of any other insurer the liquidator or assignee as the case may be in the case of all persons appearing by the books of the company or other insurer to be entitled to or interested in the policies granted by the company or other insurer shall ascertain the value of the liability of the company or other insurer to each such person and shall give notice of such value to those persons in such manner as the Court may direct and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in such manner and within such time as may be specified by a rule or order of the Court

Notice of policy values

Notes —This section reproduces clause 53 of 1925 Bill and corresponds to the rule in Part II of the Seventh Schedule of the Clauson Bill —*Notes on Clauses*

61 (1) Where an insurance company is in liquidation or any other insurer is insolvent the Court may make an order reducing the amount of the insurance contracts of the company or other insurer upon such terms and subject to such conditions as the Court thinks just

Power of Court to reduce contracts of insurance

(2) Where a company carrying on the business of life insurance has been proved to be insolvent, the Court may if it thinks fit in place of making a winding up order reduce the amount of the insurance contracts of the company upon such terms and subject to such conditions as the Court thinks fit

(3) Application for an order under this section may be made either by the liquidator or by or on behalf of the company or by a policy-holder, or by the Superintendent of Insurance and the Superintendent of Insurance and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application

* VII of 1913.

Sen s Report and also on clause
ourt by s 96 of Act VI of 1912
clis es of insurance sub section
uses Mr Sen in paragraph 155
the Court po cesses under the
Indian Companies Act in matters of winding up of companies it is necessary, having regard to the special nature of insurance business to give special powers to the Court to reduce the amounts of the insurance contracts entered into by the company which is
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(*a*) *The Court in the case of a life in urance company which has been proved to be* insolvent may if it thinks fit in place of making a winding up order reduce the amount of the contracts of the life insurance company upon such terms and subject to such conditions as it thinks just

(*b*) Where an insurance company is in liquidation the Court may make an order reducing the amount of the insurance contracts of the company upon such terms and subject to such condition as the Court thinks just

This Act should also provide that an application for such an order may be made either by (*a*) the liquidator or (*b*) by any person whether a member or a policy holder who is interested in the company and that any person likely to be affected by such an order will be entitled to be heard on the hearing of such an application ' Under section 18 of the English Assurance Companies Act 1909 the Court in the case of assurance company which has been ... fit reduce the amount of the ... such conditions as the Court ... A scheme under this section is ... may be made even after the ... order ought to be discharged *R* ... also *Re Great Britain Mutua* ... hearing of a ... 14 Court has ...

Indian Companies Act the first while the company is in existence which can be made on an application either by the company or by a creditor or by a member of the company the second after a winding up order has b en made which can be made on an application by the liquidator *Viramgam Spinning v Industrial* 89 Ind Cas 103=27 Bom L R 665 =A I R 1925 Bom 442 Such a scheme is a means of avoiding a winding up and of enabling the company to carry on its business *Ie British Bilous Assurance* (1905) 2 Ch 40

SPECIAL PROVISIONS RELATING TO EXTERNAL COMPANIES

Power of Central Government to impose reciprocal disabilities on non Indian companies

62 Where, by the law or practice of any country outside India in which an insurer carrying on insurance business in British India is constituted, incorporated or domiciled, insurance companies incorporated in British India are required as a condition of carrying on insurance business in that country to comply with any special requirement whether as to the keeping of deposits or assets in that country or otherwise which is not imposed upon insurers of that country under this Act, the Central Government shall if satisfied of the existence of such special requirement, by notification in the official Gazette, direct that the same requirement, or requirements as similar thereto as may be, shall be *imposed upon insurers of that country as a condition of carrying on the* business of insurance in British India

Notes—This section taken with the provisions of section 3(3) of the Act supplies the means of enforcing reciprocity in the treatment of Indian insurance companies abroad

Particulars to be filed by insurers established outside British India

63 Every insurer, having his principal place of business or domicile outside British India, who establishes a place of business within British India, or appoints a representative in British India with the object of obtaining insurance business, shall, within three months from the establishment of such place of business or the appointment of such agent, file with the Superintendent of Insurance—

(a) a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instrument constituting or defining the constitution of the insurer, and, if the instrument is not written in the English language, a certified translation thereof,

(b) a list of the directors, if the insurer is a company,

(c) the name and address of some one or more persons resident in British India authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer, together with a copy of the power of attorney granted to him

(d) the full address of the principal office of the insurer in British India,

(e) a statement of the classes of insurance business to be carried on by the insurer, and

(f) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in section 62 imposed in the country of origin of the insurer on Indian nationals,

and, in the event of any alteration being made in the address of the principal office or in the classes of business to be carried on in any instrument here referred to or in the name of any of the persons here referred to, or in the matters specified in clause (f) above the company shall forthwith *furnish to the Superintendent of Insurance* particulars of such alteration

Notes—This section is based on paragraph 236 of Mr Sen s Report section 19 of

V of 1928 the following documents —

(i) a declaration as to the place in British India where the principal place of business is to be located

(ii) the name and address of the person who is to be the agent of the company in British India and

the per onnel of the he date thereof and a filed within the time recurring fine

Business within British India—It D nl (1902) 1 K B 312 it has been held that when it has its own premises here where behalf In the above case Coll is M I s beginning with *Net b v Van Oppe* (L *La Bourgogne* [(1899) p 1 (1899) A C 431] that the true test in such cases is whether

the foreign corporation is conducting its own business at some fixed place within the jurisdiction that being the only way in which a corporation can reside in this country It can only so reside through its agent not being a concrete entity itself, but if it so resides by its agent it must be considered for this purpose as itself residing within the jurisdiction In several of the cases decided on this subject the difficulty has been to determine whether the busi
diction was the business

for the purposes of their business to
n independent business of his own at some place in this country and therefore we are not called on in this case to consider the question whether a foreign corporation making use for their purpose of a person carrying on a business of his own can under the circumstances be regarded as themselves carrying on their own business within the jurisdiction A difficult question of that kind arose in the case of *La Bourgogne* [*supra*] There a foreign company employed as their agent in this country a person who also acted as agent for two other companies and transacted their business on the same premises and we held that the defendants were through him carrying on business in such a way as to be resident within the jurisdiction No such difficulty arises here as arose in that case Here the defendants hired premises for their own exclusive use and did not resort for the purposes to some per on who was carrying on an independent business but employed their own servant to conduct the business A company which carries on business here through an agent but has no office does not establish a place of business here *Princess Clementine* (1899) p 18 *Lord Advocate* v *Huron and Erie Loan Co* (1911) S C 612

64 *Every insurer having his principal place of business or* domicile outside British India shall keep at his principal office in British India such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Superintendent of Insurance in respect of the insurance business transacted by him in India to be compiled and, if necessary, checked by the Superintendent of Insurance

Books to be kept by insurers established outside British India

PART III

PROVIDENT SOCIETIES

65 In this Part "provident society" means a person who, or a body of persons whether corporate or incorporate which, receives premiums or *contributions for securing annuities* on human life or receives premiums or contributions for insuring money to be paid on the happening of any of the following contingencies, namely —

Definition of 'provident society

(*a*) the birth, marriage, death of any person or the survival by a person of a stated age or contingency ,

(*b*) failure of issue ,

(*c*) the occurrence of a social, religious or other ceremonial occasion ,

(*d*) loss of or retirement from employment ,

(*e*) disablement in consequence of sickness or accident ,

(*f*) the necessity of providing for the education of a dependant , and

(*g*) any other contingency which may be prescribed or which may be authorised by the Provincial Government with the approval of the Central Government

Notes —this section is based on paragraph 333 of Mr ...en's Report

66 Nothing in this Part shall apply to a provident society which pays or undertakes to pay on any policy of insurance an annuity exceeding fifty rupees or a gross sum exceeding five hundred rupees exclusive of any profit or bonus

Application of this Part

Provided that for the purposes of this section contracts entered into before the commencement of this Act shall not be taken into consideration and provided further that "policy" includes a series of policies covering one or more of the contingencies specified in section 65

Notes—*Vide* paragraphs 319 to 351 of Mr Sen s Report

67. No provident society established after the commencement of this Act shall adopt as its name, and no provident society established before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name, any combination of words which fails to include the word "provident" or which includes the word ' life'

Name

Notes —This section is based on paragraph 366 of Mr Sen s Report which runs as follows —

Re ... *names* —*It has been* ... at *from various quarters that in order to* ... Provident Insurance Companies Act it ... regarding the names to be allowed to be ... ision in this direction in the statute but ... Governments have made rules the effect ... assurance or Life Insurance in connec ... is not to be found in all the provinces In my opinion it is necessary that in order to properly distinguish Provident Insurance Societies from the insurance companies these societies must not only be prevented from using the words Life Insurance and Life Assurance but they must have the word 'Provident associated with the names and I recommend that the statute should make provisions on these lines In my opinion this is necessary to make it clear to the public that the concern is really a Provident Insurance Society and not a Life Insurance Company Existing companies should be given six months time within which to effect the necessary changes in the name A Provident or Life Insurance Company may be restrained from using the same or similar name of another Provident or Life Insurance Company *Oriental Government Security v Oriental Assurance Co* 40 C 570 21 Ind Cas 258

68 No provident society shall receive any premium or contribution for insuring money to be paid to any person other than the person paying such premium or contribution or the wife, husband, child, grand child, parent, brother or sister, nephew or niece of such a person

Insurable interest

Notes —This section as originally framed reproduced s 4 of Act V of 1912 But the ... the original draft observed We have ... irance of all kinds not merely policies on ... es to the category of those with insurable

69 (1) No provident society shall carry on any buisness upon the dividing principle, that is to say on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution, amongst policies maturing for payment within certain ...

Dividing business

(2) ... possible, take steps to ... siness on the dividing principle wound up

Provided that, where any such provident society in existence at the commencement of this Act applies within three months of such commencement to the Superintendent of Insurance for permission to continue carrying on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act, the Superintendent of Insurance may at his discretion, with due regard to the past history of the society, permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society

Notes —This section is based on paragraphs 334 342 of Mr Sen s Report which runs as follows —

334 In this connection I propose next to deal with what is known as Dividing

Provident Insurance Society

335 Dividing Society Business is defined as Provident Insurance Business under which the amount payable on the policy money becoming due is not fixed but depends either partly or wholly on the results of the division of any portion of the premium income or funds amongst the policies which have become due for payment in proportion to the premium received in each class in any specified period In other words roughly speaking the scheme generally is this *viz*, the society distributes the yearly collection realised from its members excepting a small account which is kept for expenses amongst members whose policies mature during the year

336 To my mind (and I am fortified in this view by the expressions of opinion from the Government Actuary himself) it is a misnomer and a mistake to include this class of business in the category of insurance business

338 The worst feature of those societies is that there is no scientific basis for the payments There is no age limit for persons who desire to be enrolled on the list of members of these societies and there is no medical examination There is one uniform rate of subscription and young and old are both eligible for the memberships The amount of payment naturally varies with number of people who are on the list of members as also the number of deaths occuring in a particular year There is no nor there can be any guaranteed minimum but some of these companies in order to attract members fraudulently announce a fixed minimum sum as being payable on death Based as they are on no scientific principles these institutions are bound to go from bad to worse and must ultimately end in liquidation

339 This form of insurance has been attracting the attention of the local Governments in Bengal and in Bombay from a considerable time past and from time to time representations have been made by these two *Governments to the Government of* India to provide some means for putting a stop to this class of business which by reason of the patent unsoundness of their schemes are bound to fail Government Actuaries have condemned it times without number and the opinion of the present Government Actuary in his report for the year 1933 runs as follows —

Some Indian Companies transact life assurance business on the dividing plan under which the sum assured is not fixed but depends on the division of a portion of each year s premium income amongst the claims arising in that year The main defect of dividing insurance business is that policy holder in each class are charged the same rate of premium or subscript
from 18 to 60 years
to the practice of
company It has
the Act of 1912 w
insurance bu iness and most of them came to grief Of such companies which were in

existence at the time of the passing of the Act the majority have disappeared and some have stopped issuing policies on the dividing plan A few new companies have taken up this dividing insurance business and it will not be long before they realise their mistake '

"310. It is surprising that inspite of such strong condemnation these companies have not yet been put down Prominent individuals connected with insurance as also prominent public bodies and journals interested in insurance matters have practically with no exception condemned it and having regard to the unanimity of opinion of insurance [illegible]

(ii) provisions with regard to the existing societies

"342 As regards the provisions to be made for preventing the formation of such societies in the future the best course obviously is to prohibit in the statute carrying on of business on dividing insurance basis

"343 [illegible]
opinion, so [illegible]
bound to g [illegible]
only course [illegible]
up "—Vide [illegible]
in the origin [illegible]
as to give [illegible]
provision [illegible]
illegal T [illegible]
class for [illegible]

must be undertaken during the year of respite '

70. (1) No provident society except a provident society registered under the provisions of the Provident Insurance Society Act, 1912 * shall receive any premium or contribution until it has obtained from the Superintendent of Insurance a certificate of registration

Registration.

(2) Every application for registration shall be accompanied by—

(a) a certified copy of the rules of the society, and when the society is a company incorporated under the Indian Companies Act, 1913,† a certified copy of the Memorandum and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society ,

(b) the names and addresses of the proprietors or directors, and the managers of the society ,

(c) a certificate from the Reserve Bank of India that the initial deposit referred to in section 73 has been made and

(d) a declaration verified by an affidavit that the minimum working capital required by section 72 is available

(3) The Superintendent of Insurance may refuse to issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the minimum working capital required by section 72 is available, but if he is so satisfied he shall register the society and its rules

(4) The Superintendent of Insurance may, after giving previous notice in writing in such manner as he thinks fit specifying the grounds for the proposed cancellation, and allowing the society concerned an

* V of 1912 † VII of 1913

Provided that, where any such provident society in existence at the commencement of this Act applies within three months of such commencement to the Superintendent of Insurance for permission to continue carrying on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act, the Superintendent of Insurance may at his discretion, with due regard to the past history of the society, permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society

Notes —This section is based on paragraphs 331 312 of Mr Sen s Report which runs as follows —

334 In this connection I propose ... Insurance Bus... at pre... Busin... the L... of the... implic... Provid... be legitimately carried on by a

335 Dividing Society Business is defined as Provident Insurance Business under which the amount payable on the policy money becoming due is not fixed but depends either partly or wholly on the results of the division of any portion of the premium income or funds amongst the policies which have become due for payment in proportion to the premium received in each class in any specified period In other words roughly speaking the scheme generally is this viz the society distributes the yearly collection realised from its members excepting a small account which is kept for expenses amongst members whose policies mature during the year

336 To my mind (and I am fortified in this view by the expressions of opinion from the Government Actuary himself) it is a misnomer and a mistake to include this class of business in the category of insurance business

337 The genesis ... the early 18th century am... members for the purpo... representatives of any...

338 The worst feature of those societies is that there is no scientific basis for the payments There is no age limit for persons who desire to be enrolled on the list of members of these societies and there is no medical examination There is one uniform rate of subscription and young and old are both eligible for the memberships The amount of payment naturally varies with number of people who are on the list of members as also the number of deaths occuring in a particular year There is no nor there can be any guaranteed minimum but some of these companies in order to attract members fraudulently announce a fixed minimum sum as being payable on death Based as they are on no scientific principles these institutions are bound to go from bad to worse and must ultimately end in liquidation

339 This form of insurance has been attracting the attention of the local Governments in Bengal and in Bombay from a con... time representations have been made by these ... India to provide some means for putting a stop to the patent unsoundness of their schemes are bot... condemned it times without number and the opinion of the present Government Actuary in his report for the year 1933 runs as follows —

Some Indian Companies transact life ass... which the sum assured is not fixed but depen... premium income amongst the claims arising ... insurance business is that policy holder in ... class are charged the same rate of premium or subscription irrespective of their age on adm... from 18 to 60 years Business of this ... to the practice of fraud o... company It has been de... the Act of 1912 was passe... ...unerous insurance business and most of them came to grief Of such companies which were in

existence at the time of the passing of the Act the majority have disappeared and some have stopped issuing policies on the dividing plan A few new companies have taken up this dividing insurance business and it will not be long before they realise their mistake

* 340 It is surprising that inspite of such strong condemnation these companies have not yet been put down Prominent individuals connected with insurance as also prominent public bodies and journals interested in insurance matters have practically with no exception condemned it and having regard to the unanimity of opinion of insurance

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herefore
I will

* 342 As regards the provisions to be made for preventing the formation of such societies in the future the best course obviously is to prohibit in the statute carrying on of business on dividing insurance basis

343 The question of the existing societies however present some difficulties In my opinion so far as these are concerned having regard to the fact that these concerns are bound to go to liquidation and thus to affec
only course is to make the best of a bad
up —Vide Mr Sen s Report on the Insurance
in the original section the Select Committee
as to give a more comprehensive definition of
provision for the compulsory winding up of societies transacting the business now made illegal There are however societies which have successfully carried on business of this class for many years inspite of the actuarial unsoundness of the principle We think that

70 (1) No provident society except a provident society registered under the provisions of the Provident Insurance Society Act 1912 * shall receive any premium or contribution until it has obtained from the Superintendent

Registration

ll be accompanied by—
the society and when the society is a company incorporated under the Indian Companies Act, 1913 † a certified copy of the Memorandum and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society

(b) the names and addresses of the proprietors or directors and the managers of the society,

(c) a certificate from the Reserve Bank of India that the initial deposit referred to in section 73 has been made and

(d) a declaration verified by an affidavit that the minimum working capital required by section 72 is available

(3) The Superintendent of Insurance may refuse to issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the minimum working capital required by section 72 is available but if he is so satisfied he shall register the society and its rules

(4) The Superintendent of Insurance may, after giving previous notice in writing in such manner as he thinks fit specifying the grounds for the proposed cancellation and allowing the society concerned an

* V of 1912 † VII of 1913

opportunity of being heard, apply to the Court and obtain sanction for cancellation of the registration made under this section or made under the provisions of the Provident Insurance Societies Act, 1912,*—

(*a*) if he is satisfied as the result of an inquiry made under section 87—

(*i*) that the society is insolvent or is likely to become so, or

(*ii*) that the business of the society is conducted fraudulently or not in accordance with the rules thereof, or that it is in the interests of the policy-holders that the society should cease to carry on business

(*b*) if the initial deposit or any of the further deposits required by section 73 has not been made, or

(*c*) if the society, having failed to comply with any requirement of this Act has continued such failure for a period of one month after notice of such failure has been conveyed to the society by the Superintendent of Insurance

Provided that the Superintendent of Insurance may, if he thinks fit, instead of applying for cancellation of the registration under sub-clause (*i*) of clause (*a*) of this sub-section make a recommendation to the Court that the contracts of the society should be reduced in such manner and subject to such conditions as he may indicate

Prohibition of managing agents

71 The provisions of section 32 shall apply to provident societies as they apply to insurers

Working capital

72 No prvident society established after the commencement of this Act shall be registered unless it has a paid up capital sufficient to provide as working capital a net sum of not less than five thousand rupees *exclusive of deposits made under this Act and exclusive in the case of* a company of any expenses incurred in connection with the formation of the company

Notes—Mr Sen in paragraph 324 of his report says The making of a provision for the deposit of the sum of Rs 5 000 with the controller is not by itself however sufficient to prevent the formation and continuance of mushroom societies It is in my opinion also necessary that before any such society is allowed to commence work there should be a sufficient sum available for working capital This is necessary in order to
provide against the ... recom
mended a similar pr... ons
which are fairly ob... ion
I am of opinion that ... um
working capital which ... sed
to commence business Along with the other documents necessary to be filed there must

* V of 1912

also be fil d a declaration on oath by the promoters (in case it is a proprietary concern) or the directors (in case it is a company incorporated under the Indian Companies Act) that they have in their hands at least a nett sum of Rs 5 000 as and by way of working capital

Deposits

73 (1) Every provident society shall, if established before the commencement of this Act within one year from such commencement, or, if established after the commencement of this Act before the society applies for registration under section 70, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank, for and on behalf of the Central Government, cash or approved securities amounting at the market value of the securities on the date of deposit to five thousand rupees and shall thereafter make each year a further deposit amounting to not less than one-fifth of the gross premium income for the year (including admission fees and other fees received by the society) until the total amount so deposited and kept is fifty thousand rupees

(2) The provisions of sub sections (*8*), (*9*) and (*10*) of section 7 and of sub-section (*1*) of section 8 shall apply to the deposits made under this section as they apply to deposits made by an insurer

Notes —Mr Sen in paras 315 to 323 of his report says —

315 At the present time there is no provi on for any deposit in the case of prov dent insurance societies The reason why no deposit for this class of societies was provided for was the fact that in the opinion of the Legislature the l mited scope of activities of the e companies did not then call for any deposit This assumption on the part of the Leg slature as appears from the actual facts was not justif ed The absence of such a provision has enabled an inordinately large number of mushroom concerns to be brought into existence in this country Most unbusiness like attractive schemes have been put forward by these exploiters to capture business The premiums received are misused and the result is as I have stated that after a short time many of these newly formed societies have come to grief

316 In the various suggestions which have been received from various quarters

pinion on the question of

r a rather difficult one
ndia to bring Provident
level in the matter of
ind such a provision if
mpanies but also in the
ns now do ng business in
scale of deposit must be

improvised for these small companies —*Sen s Report*

Rules

74 (1) Every provident society established after the commencement of this Act shall in its rules set forth—

(*a*) the name the object and the location of the registered office of the society

(*b*) the contingencies or classes of contingecy on the happening of which money is to be paid

(*c*) the conditions to be complied with before and the payments to be made on, admission to the society

(*d*) the rates of premium or contribution and the periods for which or the times at which premiums or contributions are payable ,

(*e*) the maximum amount payable to a subscriber or policy-holder ,

(*f*) the nature and amounts of the benefits provided for by the society ,

(*g*) the circumstances in which a bonus may be paid to a policy-holder,

(*h*) the nature of the evidence required for the proof of the happening of any contingency on which money is to be paid,

(*i*) the circumstances in which policies may be forfeited or renewed or the whole or a part of the premiums paid on a policy may be returned, or a surrender value of a policy may be granted,

(*j*) the penalties for delay in paying or failure to pay premiums or contributions,

(*k*) the proportion of the annual income of the society which may be disbursed on and the provisons to be made for meeting the expenses of the management of the society,

(*l*) the person or persons who or the authority which shall have power to invest the funds of the society;

(*m*) the provisions for appointment of auditors and their remuneration,

(*n*) the procedure to be adopted in altering the rules of the society

(*o*) unless these are provided for in the articles of association of a society which is a company incorporated under the Indian Companies Act, 1913,* —

(*i*) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society,

(*ii*) the [illegible] capital, and

(*iii*) th [illegible] of general meetings of the members and [illegible] powers to be exercised and the procedure to be followed thereat and

(*p*) such other matters as may be prescribed

(2) Where the rules of any provident society registered under the Provident Insurance Societies Act, 1912 † fail to comply with the provisions of this section the society shall, before the expiry of twelve months from the commencement of this Act, amend the rules so as to comply with these provisions

Notes —This section expands section 5 of Act V of 1912 as recommended in paragraph 327 of Mr Sen s report In paragraphs 325 and 326 of his report Mr. Sen says —

' 325 In the next place I would suggest that the provision in the Act regarding the filing of rules of business be altered and it should be made obligatory on all companies to file rules which will have a certain number of items as common items Under the existing provisions of the Act it is incumbent on the societies to file with the registrar at the time of the application for registration a copy of the rules All that the concerns have to see is that the rules must comply w [illegible] may refuse registration if he is of opinion [illegible] with the Act He has to give notice [illegible] objects to and the companies have 60 days [illegible] On such amended rule being put in an [illegible]

uniformity in the matter of these rules

' 326 In my opinion it is desirable to have an uniformity in the matter of rules, if possible, and what I would therefore suggest is that section 5 should indicate such

* VII of 1913 † V of 1912.

matters as all societies without any exception must provide by their rules and leave the Local Governments to super impose such special matters as local conditions may justify ' Sub section (2) provides for bringing existing societies on same lines) —*Vide Notes on Clauses*

75. (1) No amendment of any rule of a provident society shall be valid until it has been sent to the Superintendent of Insurance and has been registered by him

Amendment of rules

(2) The Superintendent of Insurance on being satisfied that the proposed amendment is not contrary to the provisions of this Act shall unless he is of opinion that the amendment unfairly affects the rights of existing members or policy-holders of the society, issue to the society an acknowledgment of the registration of the amended rule

Notes —This section is based on paragraphs 328 and 329 of Mr Sen s Report which are as follows —

328 In order to prevent unscrupulous person from changing rules for avoiding liabilities undertaken by them I would also suggest some changes in the provisions in the Act relating to amendment of rules as contained in section 8 The present provisions do not make any provisions for the preservation of the rights of the existing policy holders It is quite conceivable that amendments may sometimes be made which though they are not repugnant to the Act are such that they are likely to affect the rights of the existing policy holders Some cases where this has been actually done have been brought to the notice of the Government as well

329 ... powerless In order to ... amended so as to make it ... society which is likely

... given to the policy holders then in existence ... reject or sanction the amendment and to impose ... proper In my opinion these provisions if prop... prevent the formation of mushroom societies —*Report of Mr Sen on the Insurance Laws*

76 Every provident society shall on demand deliver free of cost to any member of the society a copy of the rules of the society and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee

Supply of copy of rules

Notes — This section reproduces section 9 of Act V of 1912 —*Notes on Clauses*

77 Every provident society shall have an office (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all communications and notices may be addressed, and shall give notice to the Superintendent of Insurance of any change in the location thereof within twenty-eight days of its occurrence

Registered office

... ments of this clause by the Indian Companie... this clause of the Insurance Act We have inser... have to be reported —*Report of the Select Committee*

78 Where any notice, advertisement or other official publication of a provident society contains a statement of the amount of the authorised capital of the society the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up

Publication of authorised capital to contain also subscribed and paid up capital

Notes — This section reproduces section 11 of Act V of 1912 —*Notes on Clauses*

Registers and books

79 Every provident society shall keep at its registered office—

(*a*) a register of members in which shall be entered the name address and occupation if any, of every proprietor, director, manager or secretary and of every member of the society

(*b*) a register or record of policies in which shall be entered in respect of every policy issued by the society the name and address of the policy-holder, the date when the policy was effected and a record of any transfer assignment or nomination of which the society has notice

(*c*) a register of claims in which shall be entered every claim made together with the date of the claim, the name and address of claimant and the date on which the claim is discharged or in the case of a claim which is rejected the date of rejection and the grounds therefor

(*d*) a register of agents in which shall be entered the name and address of every agent employed by the society,

(*e*) a cash book in which shall be entered separately for each class of contingency separately specified in section 65 all sums received and expended by the society and the matters in respect of which the receipt or expenditure takes place,

(*f*) ledger and

(*g*) a journal

Notes —This section is based [illegible] his report where he says The proper books and accounts to be ke[illegible] of the books to be kept by a soci[illegible] kept by the company In my opinio[illegible] which every company should keep [illegible]

Revenue account balance sheet and annual statements

80 (1) Every provident society shall at the expiry of the calendar year prepare a revenue account and balance-sheet in the prescribed form verified in the prescribed manner together with a report on the general state of the society's affairs and shall cause the revenue account and balance-sheet to be audited by an auditor and the auditor shall so far as may be in the audit of a provident society have the powers of exercise the functions vested in and discharge the duties and be subject to the liabilities imposed on an auditor of companies by section 145 of the Indian Companies Act, 1913 *

(2) Every provident society shall at the expiry of the calendar year prepare with respect to that year—

(*a*) a statement showing separately for each class of contingency separately specified in section 65—

(*i*) the number of new policies effected, the total amount insured thereby and the total premium income received in respect thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and

(*ii*) the total amount of claims made and the total amount paid in satisfaction thereof,

(*b*) a statement showing details of every insurance effected on a life other than the life of the person insuring and

* VII of 1913

(c) a statement showing the total amount paid as allowances to agents and canvassers

(3) Until the expiry of two years from the commencement of this Act this section shall apply to provident societies registered before the commencement of this Act under the Provident Insurance Societies Act, 1912,* as if the reference to the calendar year were a reference to either the financial year or the calendar year

Notes —"Sub section (1) expands section 13 of Act V of 1912 on the lines proposed in paragraph 351 of Mr Sen s report As the year of account is changed to the calendar year, sub-section (3) is designed to give the societies time to change from one system to the other In sub section (2) clause (b) reproduces the substance of section 15 of Act V of 1912 This is necessary to enable section 68 to be enforced —*Notes on Clauses*

Actuarial report and abstract

81. (1) Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made into its financial condition including the valuation of its liabilities and assets by an actuary

(2) The report of the actuary shall contain an abstract in which shall be stated—

(a) the general principles adopted in the valuation, including the method by which the valuation age of lives was ascertained,

(b) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation,

(c) the reserve values held against policies effected,

(d) the rate of interest assumed, and

(e) the provision made for expenses,

and shall have appended to it a certificate signed by a principal officer of the society that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation

(3) If the actuary finds that the financial condition of the society is such that no surplus exists for distribution as bonus to the policyholders or as dividend to the shareholders, he shall state in his report whether in his opinion the society is insolvent and, if so, whether it should be wound up or not and the extent to which in his opinion existing contracts should be modified or existing rates of premium should be adjusted to make good the deficiency in the assets

Notes —This section is based on paragraph 357 of Mr Sen s report In my opinion it is essentially necessary for every society to have an actuarial valuation of its assets and

Submission of returns to Superintendent of Insurance

report thereon and the report on the general state of the society s affairs referred to in sub section (1) of section 80 and the statements referred to in sub section (2) of section 80 shall be furnished as returns to the Superintendent of Insurance within three months from the end of the period to which they relate and copies of the

* V of 1912

revenue account and balance-sheet and the auditor's report thereon and of the report on the general state of the society's affairs shall on the application of any member or policy holder made within two years from the date on which the document was so furnished be sent to him within fourteen days from the receipt of the application on payment of a fee of one rupee

(2) All the material necessary for the proper valuation of the laibilities of the society under the provision of section 81 shall be placed at the disposal of the actuary within three months from the end of the period to which such material relates, and the report and abstract referred to in section 81 shall be furnished as a return to the Superintendent of Insurance within a further period of three months

(3) The provisions of section 17 shall apply to the accounts and balance sheet of a provident society being a company incorporated under the Indian Companies Act, 1913,* as they apply to the accounts and balance sheet of an insurer

Notes —This section provides for the supply to the Superintendent of Insurance of the necessary returns and for the supply of copies thereof to the members or policy holders —*Notes on Clauses*

Actuarial examination of schemes

83 (1) *Every provident society established after the commencement* of this Act shall cause every scheme of insurance which it proposes to put into operation and every provident society *registered before the commencement of this Act under the provisions* of the Provident Insurance Societies Act 1912,† shall cause any new scheme which it proposes to put into operation after such commencement to be examined by an actuary, and shall not receive any premium or contribution in connection with the scheme until the actuary has certified that the scheme is sound and such certificate has been forwarded to the Superintendent of Insurance

(2) The provisions of sub section (*1*) shall apply to any alteration of a *scheme already in operation* but *the Superintendent* of Insurance may if he is of opinion that the alteration unfairly affects the interest of existing policy-holders prohibit the alteration and if he does so the society shall not put the altered scheme into operation unless it first discharges to the satisfaction of the Superintendent of Insurance all its liabilities to those of the existing policy-holders who dissent from the alteration

(3) Every provident society registered before the commencement of this Act under the provisions of Provident Insurance Societies Act 1912,† shall as soon as may be and in any event before the expiry of six months from the commencement of this Act, submit all schemes of insurance which the society has in operation at the commencement of this Act to examination by an actuary and shall send the report of the actuary thereon to the Superintendent of Insurance

(4) The report of the actuary shall state in respect of each scheme whether it is actuarially sound and where no actuarial report such as is referred to in section 81 has been made within the two years preceding the examination the report shall also state whether the

* VII of 1913 † V of 1912

assets of the society are sufficient to meet its liabilities under the existing schemes, and, if not, how in the opinion of the actuary the existing contracts should be modified

(5) If any scheme is reported by the actuary to be actuarially unsound, the Superintendent of Insurance shall give notice to the society prohibiting the operation of the scheme, and the society shall not receive any premium or contribution or effect any policy in connection with the scheme after the expiry of one month from the receipt of such notice

(6) Where a scheme is discontinued under the provisions of sub-section (5) the society shall, where its assets are sufficient to meet all existing liabilities, set apart out of its assets the sum sufficient in the opinion of the actuary to meet the liabilities incurred under the scheme so discontinued and, where its assets are not so sufficient, within three months from the date of the discontinuance apply to the Court for a modification of its existing contracts or failing such modification for the winding up of the society

Separation of acounts and funds

84 Where a provident society effects policies of insurance in connection with more than one of the classes of contingency separately specified in section 65, the receipts and payments in respect of each such class shall be recorded in a separate account in the cash book kept in accordance with section 79

Investment of funds

85 (1) Every provident society shall, unless it already holds invested in Government securities or securities mentioned or referred to in clauses (*c*) and (*d*) of section 20 of the Indian Trusts Act 1882 * not less than fifty per cent of the total assets of the society invest all surplus assets in such securities until the total amount so invesed amounts to not less than fifty per cent of the total assets of the society, and shall thereafter keep invested in such securities not less than fifty per cent of the total assets of the society

(2) No funds or investment of a provident society except a deposit made under section 73 shall be kept otherwise than in the name of the society

(3) No loan shall be made out of the assets of a provident society to any director or officer of the society except on the security of a policy of insurance held in the society and within its surrender value and no such loan shall be made to any concern of which a director or officer of the society is a director or partner

(4) Any director or officer of a society which contravenes the provisions of sub-section (3) who is knowingly a party to the contravention shall without prejudice to any other penalty which he may incur be jointly and severally liable to the society for the amount of the loan and such amount, together with interest from the date of the loan at such rate not exceeding twelve per cent per annum as the Superintendent of Insurance may fix, shall on application by the Superintendent of Insurance to any civil Court of competent jurisdiction be recoverable by execution as if a decree for such amount had been passed by that Court

* II of 1882

Notes —This section is based on paragraph 360 of Mr Sen s report which runs as follows —

'The scheme in England under the Friendly Societies Act of 1896 is to create a statutory body of trustees in whom the funds of a Friendly Society are vested and under section 44 of the Act the trustees may with the consent of a majority of the members present invest the funds of a society either—

(a) in Post Office Savings Bank or in any other Savings Bank certified under the Trustee Savings Bank Act or

(b in the public funds or

(c) with the National Debt Commissioners

(d) in the purchase of land or in the erection of buildings thereon or

(e) upon such other security not being personal security in which under the rules of the society the moneys can be invested

I am convinced that in the interest of the numerous policy holders it it essentially necessary that a substantial portion of the funds of the Provident Insurance Societies in India should be kept in Government and Trustee Securitie

Inspection of book

86 The books of every provident society shall at all reasonable times be open to inspection by the Superintendent of Insurance or any person appointed by him in this behalf or by any member or policy-holder of the society who has made an application in this behalf to the Superintendent of Insurance

Notes —This section reproduces section 16 of Act V of 1912

Inquiry by or on behalf of Superintendent of Insurance

87 (1) The Superintendent of Insurance shall at least once in two years and may, if he thinks fit at any time visit personally or depute a suitable person to visit the principal office of a provident society and inquire into the solvency of the society and the manner in which the business of the society is conducted, or may after giving notice to the society and giving it an opportunity to be heard, direct such an inquiry to be made by an auditor or actuary appointed by him

(2) For the purposes of any such inquiry the Superintendent or the auditor or actuary, as the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanations as he may require on any matter relating to the affairs of the society

(3) The results of any such inquiry shall be recorded in a report which shall be kept in the office of the Superintendent and a copy of the report shall be sent to the society concerned and shall be open to inspection by any member or policy holder of the society

Notes —See paragraph 363 of Mr Sen s report See also section 17 of Act V of 1912 Th s clause as drafted makes no provision for charging the society with the costs of an inquiry as it is thought these [illegible]
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irregularities and illegalities which have been brought to light it is necessary to make some provisions for periodical inspection of the books and documents of these societies

Winding up by Court and voluntary winding up

88 (1) The Court may order the winding up of a provident society being a company incorporated under the Indian Companies Act 1913 * and the provisions of that Act shall subject to the provisions of this Part apply accordingly

* VII of 1913

(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of a provident society, if the registration of the society is cancelled by the Superintendent of Insurance under sub section (4) of section 70 and he applies for the winding up of the society

(3) A provident society being a company incorporated under the Indian Companies Act, 1913,* may be wound up voluntarily in accordance with the provisions of that Act, but shall not be so wound up except for the purpose of effecting an amalgamation or reconstruction of the society or on the ground that by reason of its liabilities it cannot continue its business

(4) A provident society not being a company incorporated under the Indian Companies Act, 1913 * may be wound up voluntarily under this Act if a resolution is passed by the proprietors that the society should be wound up voluntarily for the purpose or on the ground specified in sub-section (3) and the Superintendent of Insurance may in any case where he has ordered the cancellation of the registration of a society under sub section (4) of section 70, order the winding up of the society under this Act

Note Th ... Report Provision has ... ovident societies being ... wound up by the Court ... ground contained in sub section (2)

(b) The voluntary winding up of a provident society being a company is to be in the manner provided by the Indian Companies Act but only for reasons stated in sub section (3)

... urses

89 The Court may make an order reducing the amount of the insurance contracts of a provident society upon such terms and subject to such conditions as the Court thinks just—

Reduction of insurance contracts

(a) if the Superintendent of Insurance as an alternative to cancelling t... r sub section (4) of section 70 applies t...

(b) ... the Court thinks fit

(c) if when a society has been proved to be insolvent the Court thinks fit to do so in place of making an order for the winding up of the society or

(d) if the Court is satisfied on an application made in this behalf by the society supported by the report of an actuary, and after giving the policy-holders an opportunity to be heard that it is desirable to do so

90 (1) Where a provident society is to be wound up whether under the Indian Companies Act 1913 * or under this Act the society shall within seven days from the date of the order of the Court ordering the

Appointment of liquidator

* VII of 1913

by the Court for the winding up of a company under the Indian Companies Act 1913 *

93 (1) As soon as the affairs of a provident society are fully wound up the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members creditors and contributories for the purpose of laying before it the account and giving any explanation thereof

Dissolution of provident societies

(2) Notice of the meeting shall be sent to each person individually and shall be advertised in the local official Gazette and in at least two newspapers circulating in the province in which the society is situated

(3) *Within one week after the meeting the liquidator shall send* to the Superintendent of Insurance a copy of the account and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting

(4) The Superintendent of Insurance may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Superintendent of Insurance within six months

(5) If the Superintendent of Insurance is satisfied that the affairs of the society have been fully wound up he shall register the account of the liquidator who shall forthwith make over to the Superintendent of Insurance sums if any remaining undisposed of and on the expiry of three months from the registering of the account the Superintendent of Insurance shall declare the society dissolved and cause the dissolution of the society to be notified in the local official Gazette, and the liquidator shall thereupon be discharged from further responsibility

(6) If within a period of five years from the date on which any sums have been made over to the Superintendent of Insurance under sub section (5) an order of a Court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal the said sums shall become the property of Government

94 (1) The provisions of section 38 and section 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (*a*) of section 65

Nominations and assignments

(2) No nomination shall be valid if the person nominated is not the husband, wife father, mother child, grand-child, brother sister nephew or niece of the holder of the policy

PART IV

Mutual Insurance Companies and Co-operative Life Insurance Societies

Notes—In this new Part we have made certa[illegible] ... of insurers Mutual ... ce Compan[illegible] ... not wholly suita[illegible] ... ative Companies ... of the Select Committee ... provisions made ...

* VII of 191

Definitions

95 (1) In this Part—

(*a*) "Mutual Insurance Company" means an insurer, being a company incorporated under the provisions of the Indian Companies Act, 1913,* which has no share capital and of which by its constitution only and all policy-holders are members, and

(*b*) "Co operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act, 1912,† or under an Act of a Provincial Legislature governing the registration of co-operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act

(2) Notwithstanding anything contained in sub-section (*1*), other co-operative societies may be admitted as members of a Co operative Life Insurance Society, without being eligible to any dividend, profit or bonus

(3) A Provincial Government may, subject to any rules made by the Central Government, empower the Registrar of Co-operative Societies of the province to register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co operative Societies Act in force in the province

(4) A Provincial Government may make rules not inconsistent with any rules made by the Central Government to govern such societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies

Application of Act to Mutual Insurance Companies and Co operative Life Insurance Societes

96 The provisions of sections 6 and 7 and of sub-section (2) of section 20 so far as those provisions are inconsistent with the provisions of this Part, shall not apply, and the provisions of this Part shall apply, to Mutual Insurance Companies and Co-operative Life Insurance Societies

Working capital of Mutual Insurance Companies and Co operative Life Insurance Societies

97 No Mutual Insurance Company incorporated after the 26th day of January, 1937, and no Co-operative Life Insurance Society registered after that date under the Co operative Societies Act 1912 † or under an Act of a Provincial Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of section 98 of this Act and of the preliminary expenses if any incurred in the formation of the company or society

* VII of 1913

† II of 1912

by the Court for the winding up of a company under the Indian Companies Act, 1913 *

93 (1) As soon as the affairs of a provident society are fully wound up the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members creditors and contributories for the purpose of laying before it the account and giving any explanation thereof

Dissolution of provident society

(2) Notice of the meeting shall be sent to each person individually and shall be advertised in the local official Gazette and in at least two newspapers circulating in the province in which the society is situated

(3) Within one week after the meeting the liquidator shall send to the Superintendent of Insurance a copy of the account and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting

(4) The Superintendent of Insurance may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Superintendent of Insurance within six months

(5) If the Superintendent of Insurance is satisfied that the affairs of the society have been fully wound up he shall register the account of the liquidator who shall forthwith make over to the Superintendent of Insurance sums if any, remaining undisposed of, and on the expiry of three months from the registering of the account the Superintendent of Insurance shall declare the society dissolved and cause the dissolution of the society to be notified in the local official Gazette, and the liquidator shall thereupon be discharged from further responsibility

(6) If within a period of five years from the date on which any sums have been made over to the Superintendent of Insurance under sub section (5) an order of a Court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal, the said sums shall become the property of Government

94 (1) The provisions of section 38 and section 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (*a*) of section 65

Nominations and assignments

(2) No nomination shall be valid if the person nominated is not the husband, wife, father, mother, child, grand-child, brother, sister nephew or niece of the holder of the policy

PART IV

MUTUAL INSURANCE COMPANIES AND CO OPERATIVE LIFE INSURANCE SOCIETIES

Notes —In this new Part we have made certain special provisions for two special classes of insurers Mutual Insurance Companies and Co operative Companies for whom the provisions made in Part II are not wholly suitable —*Report of the Select Committee*

* VII of 1913

Definitions

95 (1) In this Part—

(a) "Mutual Insurance Company" means an insurer, being a company incorporated under the provisions of the Indian Companies Act, 1913,* which has no share capital and of which by its constitution only and all policy-holders are members, and

(b) "Co operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act, 1912,† or under an Act of a Provincial Legislature governing the registration of co-operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act

(2) Notwithstanding anything contained in sub-section (1), other co-operative societies may be admitted as members of a Co-operative Life Insurance Society, without being eligible to any dividend, profit or bonus

(3) A Provincial Government may, subject to any rules made by the Central Government, empower the Registrar of Co-operative Societies of the province to register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co operative Societies Act in force in the province

(4) A Provincial Government may make rules not inconsistent with any rules made by the Central Government to govern such societies and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies

Application of Act to Mutual Insurance Companies and Co operative Life Insurance Societies

96 The provisions of sections 6 and 7 and of sub-section (2) of section 20 so far as those provisions are inconsistent with the provisions of this Part, shall not apply, and the provisions of this Part shall apply to Mutual Insurance Companies and Co operative Life Insurance Societies

Working capital of Mutual Insurance Companies and Co operative Life Insurance Societies

97 No Mutual Insurance Company incorporated after the 26th day of January, 1937, and no Co-operative Life Insurance Society registered after that date under the Co operative Societies Act 1912† or under an Act of a Provincial Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees exclusive of the deposit to be made before or at the time of application for registration in accordance with sub section (2) of section 98 of this Act and of the preliminary expenses if any incurred in the formation of the company or society

* VII of 1913 † II of 1912

by the Court for the winding up of a company under the Indian Companies Act 1913 *

Dissolution of provident society

93 (1) As soon as the affairs of a provident society are fully wound up the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members creditors and contributories for the purpose of laying before it the account and giving any explanation thereof

(2) Notice of the meeting shall be sent to each person individually and shall be advertised in the local official Gazette and in at least two newspapers circulating in the province in which the society is situated

(3) Within one week after the meeting the liquidator shall send to the Superintendent of Insurance a copy of the account and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting

(4) The Superintendent of Insurance may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Superintendent of Insurance within six months

(5) If the Superintendent of Insurance is satisfied that the affairs of the society have been fully wound up he shall register the account of the liquidator who shall forthwith make over to the Superintendent of Insurance sums if any remaining undisposed of and on the expiry of three months from the registering of the account the Superintendent of Insurance shall declare the society dissolved and cause the dissolution of the society to be notified in the local official Gazette, and the liquidator shall thereupon be discharged from further responsibility

(6) If within a period of five years from the date on which any sums have been made over to the Superintendent of Insurance under sub section (5) an order of a Court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal the said sums shall become the property of Government

Nominations and assignments

94 (1) The provisions of section 38 and section 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (a) of section 65

(2) N[illegible] -[illegible] lid if the person nominated is not the [illegible] child, grand-child brother sister neph[illegible] policy

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PART IV

MUTUAL INSURANCE COMPANIES AND CO OPERATIVE LIFE INSURANCE SOCIETIES

Notes —I[illegible] t[illegible] Part we have made certa[illegible] p[illegible] for [illegible] of insurers Mutual Insurance Companies and Co operative Companies for whom the provisions made in Part II are not wholly suitable —*Report of the Select Committee*

* VII of 1913

Definitions.

95 (1) In this Part—

(*a*) "Mutual Insurance Company" means an insurer, being a company incorporated under the provisions of the Indian Companies Act, 1913,* which has no share capital and of which by its constitution only and all policy-holders are members ; and

(*b*) "Co-operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act, 1912 † or under an Act of a Provincial Legislature governing the registration of co-operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members ;

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act

(2) Notwithstanding anything contained in sub-section (1), other co-operative societies may be admitted as members of a Co-operative Life Insurance Society, without being eligible to any dividend profit or bonus

(3) A Provincial Government may, subject to any rules made by the Central Government, empower the Registrar of Co-operative Societies of the province to register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co-operative Societies Act in force in the province

(4) A Provincial Government may make rules not inconsistent with any rules made by the Central Government to govern such societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies

Application of Act to Mutual Insurance Companies and Co operative Life Insurance Societes

96 The provisions of sections 6 and 7 and of sub-section (2) of section 20, so far as those provisions are inconsistent with the provisions of this Part, shall not apply, and the provisions of this Part shall apply to Mutual Insurance Companies and Co-operative Life Insurance Societies

Working capital of Mutual Insurance Companies and Co operative Life Insurance Societies

97 No Mutual Insurance Company incorporated after the 26th day of January, 1937, and no Co-operative Life Insurance Society registered after that date under the Co-operative Societies Act, 1912 † or under an Act of a Provincial Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees, exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of section 3 of this Act and of the preliminary expenses, if any incurred in the formation of the company or society

* VII of 1913

† II of 1912

98. (1) Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, in respect of the life insurance business carried on by it in British India, deposit and keep deposited with one of the offices in India of the Reserve Bank of India, for and on behalf of the Central Government, a sum of two hundred thousand rupees in cash or in approved securities estimated at the market value of the securities on the day of deposit

Deposits to be made by Mutual Insurance Companies and Co operative Life Insurance Societies

(2) The deposit referred to in sub section (*1*) may be made in instalments, of which the first shall be a payment, made before or at the time the application for registration under this Act is made, of twenty-five thousand rupees or such sum as with any deposit previously made by the insurer under the provisions of the Indian Life Assurance Companies Act, 1912 * brings the amount deposited up to twenty-five thousand rupees and the subsequent instalments shall be annual instalments made before the expiry of each subsequent year of an amount in cash or in approved securities estimated at the market value of the securities on the day of payment of the instalment, equal to one-third of the gross premium income received in the previous year

99 No transferee or assignee of a policy issued by an insurer to whom this Part applies shall become a member of a Mutual Insurance Company or a Co-operative Life Insurance Society merely by reason of any such transfer or assignment

Transferees and assignees of policies not to become members

100 Notwithstanding the provisions of section 79 and section 131 of the Indian Companies Act, 1913,† a Mutual Insurance Company or a Co-operative Life Insurance Society may, instead of sending the notices and the copies of the balance-sheet, revenue account and other documents which they are required to send to the members under those sections, publish such notices or documents once in a newspaper published in the English language and in a newspaper published in an Indian language circulating in the place where the principal office of the company is situated

Publication of notices and documents of Mutual Insurance Companies and Co operative Life Insurance Societies

Provided that, where any members of the company are domiciled in a province other than that in which the principal office of the company is situated, publication of the balance-sheet, revenue account and notice of the meetings shall be made in a newspaper or newspapers published in the principal languages of that province and circulating therein

101 Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, on the application of any member made within two years from the date on which any such document is furnished to the Registrar of Companies under the provisions of section 134 of the Indian Companies Act, 1913,† or to the Registrar of Co-operative Societies of the province in which the Co-operative Life Insurance Society is

Supply of documents to members

* VI of 1912. † VII of 1913

registered furnish a copy of the document free of cost to the member within fourteen days of the application

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PART V

MISCELLANEOUS

Penalty for default in complying with or act in contravention of this Act

102 (1) Except as otherwise provided in this Act any insurer who makes default in complying with or acts in contravention of any requirement of this Act and, where the insurer is a company, any director, managing agent manager or other officer of the company or where the insurer is a firm, any partner of the firm who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees and in the case of a continuing default with an additional fine which may extend to five hundred rupees for every day during which the default continues

(2) Any provident society which makes default in complying with any of the requirements of Part III and any director managing agent manager, secretary or other officer of the society who is knowingly a party to the default shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default with fine which may extend to two hundred and fifty rupees for every day during which the default continues

Penalty for transacting insurance business in contravention of sections 3 6 7 97 and 98

103 (1) Any insurer or any person acting on behalf of an insurer who transacts any class of insurance business in contravention of any of the provisions of section 3 section 6 section 7 section 97 or section 98 or does any one or more of the acts constituting the business of insurance in relation to any such class of insurance business shall be punishable with fine which may extend to two thousand rupees

(2) Any person knowingly taking out a policy of insurance with any insurer or person guilty of an offence under sub section *(1)* shall be punishable with fine which may extend to five hundred rupees

Provided that nothing in this section shall apply to the business of re insurance between the head office of an insurer in British India and the head office of an insurer not having an office in British India

Penalty for false statement in document

104 Whoever in any return report certificate balance sheet or other document required by or for the purposes of any of the provisions of this Act wilfully makes a statement false in any material particular, knowing it to be false shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one thousand rupees or with both

Wrongfully obtaining or withholding property

105 Any director managing agent manager or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or authorised by this Act shall on

already paid on the policy bears to the total of the premiums payable under the policy

(2) A policy kept alive to the extent of its paid up value under sub-section (*1*) shall not participate in any profits of the insurer earned after the conversion of the policy into a paid up policy

(3) This section shall not apply to—

(*a*) policies in respect of which the sum assured is payable only on the happening of a contingency which may not arise, or

(*b*) where the paid up value will be less than one hundred rupees, or

(*c*) where the parties after the default has occurred in the payment of the premium agree in writing to some other arrangement, or

(*d*) to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non-payment of premium

Power of Central Government to make rules

114 (1) The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the qualifications to be possessed by actuaries ,

(*b*) the manner in which it shall be determined for the purposes of this Act what is insurance business transacted in British India ;

(*c*) the procedure to be followed by the Reserve Bank of India in dealing with deposits made in pursuance of this Act, including the receipt of, custody of, withdrawal of, and payment of interest on securities lodged as such deposits, and their inspection and verification by the Superintendent of Insurance ,

(*d*) the form referred to in clause (*d*) of sub-section (*2*) of section 16 ,

(*e*) the manner in which the prospectuses and tables referred to in sub-section (*1*) of section 41 shall be published and the form in which they shall be drawn up ,

(*f*) the matters to be prescribed for the purposes of section 48 ,

(*g*) the manner in which licences to act as insurance agents may be issued or cancelled ,

(*h*) the contingencies other than those specified in clauses (*a*) to (*f*) of section 65 on the happening of which money may be paid by provident societies ,

(*i*) the matters other than those specified in clauses (*a*) to (*o*) of sub-section (*1*) of section 74 on which a provident society shall make rules

(*j*) the form of any account, return or register required by Part III and the manner in which such account, return or register shall be verified ,

(*k*) subject to the provisions of this Act, the fees payable thereunder and the manner in which they are to be collected , and

(*l*) the conditions and the matters which may be prescribed under sub-sections (*5*) (*10*) and (*12*) of section 92

Provided that every rule made under this section shall be laid as

soon as may be after it is made before both Chambers of the Central Legislature for one month while they are in session, and, if within one month from the later date on which the rule has so been laid both Chambres agree in making any modification in the rule or both Chambers agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or shall be of no effect, as the case may be.

(3) All rules made by a Local Government under the provisions of section 24 of the Provident Insurance Societies Act, 1912,* and in force at the commencement of this Act shall so far as not inconsistent with the provisions of Part III continue in force and have effect as if duly made under this section until they are replaced by rules made under this section

Notes —This section corresponds to s 39 of Act VI of 1912 and s 24 of Act V of 1912 By s 39 of Act VI of 1912 the rule making power was invested in the Governor General in Council and by s 24 of Act V of 1912 the rule making power was given to the Local Government By sub section (3) All rules made by a Local Government under the ... t 1912 and in force at the ... the provisions of Part III ... tion until they are replaced ... made under section 39 of ... uses Act 1897 Section 24 ... f the Governor General in ... epealed and re enacted with ... rovided any appointment ... ed ... the repealed Act ... itinue ... s and ... r bye- ... ernor ... of the ... has ... part ... pealed ...) Ind ... 76

115 The Central Government may, on the application or with the consent of an insurer, not being a company, alter the forms contained in the Schedules as respects that insurer, for the purpose of adapting them to the circumstances of that insurer

Alteration of forms

Provided that nothing done under this section shall exempt the insurer from supplying all information required under this Act so far as it is possible for the insurer to do so

Notes —This section reproduces s 31 of Act VI of 1912

116 The Central Government may, by notification in the official Gazette, exempt any insurer constituted, incorporated or domiciled in an Indian State from the provisions of section 6 relating to deposits or from the provisions of sub-section (2) of section 27 relating to the keeping of assets in India either absolutely or subject to such conditions or modifications as may be specified in the notification

Power to exempt from certain requirements

Notes —This section reproduces section 41 of Act VI of 1912 and section 26 of Act V of 1912

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* V of 1912

117 Nothing in this Act shall affect the liability of an insurer being a company to comply with the provisions of the Indian Companies Act 1913,* in matters not otherwise specifically provided for by this Act

Saving of provisions of Indian Companies Act 1913

118 Nothing in this Act shall apply to any Trade Union registered under the Indian Trade Unions Act 1926 † or to any insurance business carried on by the Central or by a Provincial Government, or to any provident fund to which the provisions of the Provident Funds Act, 1925 ‡ apply, or, if the Superintendent of Insurance so orders in any case, and to such extent as he specifies in such order, to—

Exemptions

(*a*) *any fund in existence and officially recognised by the* Central Government before the 27th day of January 1937 maintained by or on behalf of Government servants or Government pensioners for the mutual benefit of contributors to the fund and of their dependents or

(*b*) any mutual or provident insurance society composed wholly of Government servants or of railway servants which has been exempted from any or all of the provisions of the Provident Insurance Societies Act, 1912 §

119 Every insurer registered under this Act shall deposit and keep deposited with the Superintendent of Insurance copies of all standard forms of policy contracts *issued by him in India*

Policy forms to be deposited with the Superintendent of Insurance

120 The market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Act with the Reserve *Bank of India shall be determined by the* Reserve Bank of India whose decision shall be final

Determination of market value of securities deposited under this Act

121 To the *Exception* to section 130 of the Transfer of Property Act 1882 ‖ the following words and figures shall be added namely —

Amendment of section 130 Act IV of 1882

"or affects the provisions of section 38 of the Insurance Act, 1938"

122 In the First Schedule to the Indian Limitation Act, 1908 ¶ for the entry in the third column relating to article 86 the following entry shall be substituted namely —

Amendment of Schedule I Act IX of 1908

"*The date of the death of the deceased* ... "

123 The Provident Insurance Societies Act, 1912,§ the Indian Life Assurance Companies Act, 1912,** and the Indian Insurance Companies Act, 1928 †† are hereby repealed

Repeals

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* VII of 1913
† XVI of 1926
‡ XIX of 1925
§ V of 1912
‖ IV of 1882
¶ IX of 1908
** VI of 1912
†† XX of 1928

THE FIRST SCHEDULE.

(*See* section 11.)

Notes —"The six Schedules reproduce Schedules II to VII of the Clauson Bill with modifications.

Schedule I, corresponding to Clauson Schedule II.

Part I [illegible]

Part II.—Form A. There are only three columns on each side of the balance sheet instead of five, as there is only one separate fund Under the Liability side the sub headings under 'Balances of funds and accounts' have been altered to correspond with the four clauses of insurance adapted in the Bill On the Assets side the sub heads under 'Investments' have been modified on the lines of the balance sheet contained in the Third Schedule of Act VI of 1912

Note (*b*) of Clauson is omitted and note (*g*), now (*f*) has been modified.

Schedule II, Clauson Schedule III.

Part I —Regulation 3 has been modified as there is only one class of insurance in respect of which a separate fund is kept

Part II —Forms B and C have not been altered.

Schedule III, Clauson Schedule IV.

Part I —Regulations 1 and 2 have been altered to meet the proposals of the Bill that while only in the case of life insurance including annuity business is there to a separation of assets, in the case of four classes of business into which insurance is to be divided there are to be separate accounts

Regulation 6 omits references to 'continuous disability business, 'capital redemption business', and 'industrial assurance business '

Regulations 7,8 and 9 are modified in view of the fact that there is only one separate fund, namely, that for life insurance

Among the Forms, Form E of Clauson has been omitted.

Schedule IV, Clauson Schedule V

Parts IIB, IIC, III and IV have been omitted, and in consequence in Part I regulation I has been simplified

Regulations 2 3, 4 and 9 and 10 of Part I has been omitted

Regulations 5 to 8 of Clauson, now numbered 2 to 5 have been consequentely simplified

In regulation 11 (now 7) the definition of 'standard basis' necessary for interpretation of Part IV of the Clauson Schedule has been omitted In view of the small volume of workmen s compensation business in British India, the complicated requirements of Part IV are not necessary

Schedule V Clauson Schedule VI.

Parts III and IV have been omitted altogether The only statement required by clause 11 (4) of the Bill is the statement of life insurance business in force Hence in Part I regulations 3 and 4 have been omitted and in Part II the reference to 'industrial assurance in the heading and in the proviso to paragraph, has been omitted In paragraph 6 of Part II the reference to 'statements prepared under the enactments repealed by this Act' has been omitted, since no such statement was required under Act VI of 1912

Schedule VI, Clauson Schedule VII

Only the first paragraph of Part I has been retained Paragraph 2 of Part I appears unnecessary The rule contained in Part II appears in the body of the Bill "—*Notes on Clauses*.

The Select Committee observes We have interfered as little as possible with the substance of the Schedules We have however made it obligatory to supply a separate balance sheet in respect of life insurance We have inserted certain new forms one referred to in the new regulation 6 of Part I of the First Schedule requiring a tabular statement of the market value and the book value of the assets and one referred to in the new Regulation 6 of Part I of the Third Schedule *requiring a tabular statement respecting* policies of life insurance containing fuller information than was demanded by the regulation which we have superseded In the Fourth Schedule we have omitted regulation 2 of Part I and provided by the new requ
of the information we consider requi
to the requirements specified at the b
the Forms required for the purpose
aimed at the disclosure of failure of
form

Regulations and Forms for the preparation of Balance Sheet.

PART I

Regulations

1 *The balance heet required to be prepared in respect of every class of* business carried on by an insurer is, in the form in which it is set out in Part II of this Schedule (Form A), appropriate to a case where the insurer maintains a separate fund in respect of life insurance business

shall be prepared as a sepa
isiness may be prepared as a
the addition of columns and
total of each such separate
of business, the balance at
arate fund or account, the
tstanding liabilities) mu t in
any case be incorporated in the general balance sheet

3 If any combined balance sheet is for n
it shall be in accordance with the Form set out
not be included among the assets shown in
any amount in respect of any holdi
assets and liabilities have been incorpor
sheet must show clearly on the face th
and mu t set out fully the name of
have been incorporated therein, if the
being an insurer are included in a combined balance-sheet the fact must be stated thereon

4 Where any *guarantee has been given by* an insurer (otherwise than in the ordinary course of re insurance business) in respect of the policies of any other insurer the balance sheet of the insurer by whom the guarantee was given must show clearly the name of every insurer whose policies have been so guaranteed and the extent of the guarantee

Provided that this regulation shall not apply where a combined balance sheet is issued incorporating the assets and liabilities of the insurer whose policies are guaranteed

5 Where any part of the assets of an insurer is deposited in any place *outside British India as security for the owners of policies issued in that place,* the balance sheet shall state that part of the assets has been so deposited, and, if any such part forms part of the life insurance fund, shall show the amount thereof and the place where it is deposited Where any combined balance-sheet is issued by an insurer for any purpose the information required by this regulation shall be shown in the aggregate in respect of all the insurers whose assets and liabilities have been incorporated in the balance sheet

6 There shall be appended to the balance sheet a statement in Form AA as set out in Part II of this Schedule showing the market value and the book value of the assets in India

7 Every balance-sheet shall contain the following certificates, namely —

(a) a certificate signed by the same persons as are required by this Act to [illegible] the values as shown in the balance sheet [illegible] Shares have been arrived at, and how the [illegible] used for the purpose of comparison with the values so shown,

(b) a certificate signed by the same per[illegible] sign the balance sheet and signed also, so far [illegible] shown in the balance sheet under the heading [illegible] by an actuary, certifying that the values of all the assets have been reviewed as at the date of the balance sheet, and that in their belief the assets set forth in the balance sheet are shown in the aggregate at amounts not exceeding their realisable or market value under the several headings—"Loans", "Reversions and Life Interests", "Investments", "Agent's Balances", "Outstanding Premiums", "Interest, Dividends and Rents outstanding", "Interest Dividends and Rents accruing but not due", "Amounts due from other Persons or Bodies carrying on Insurance Business", "Sundry Debtors", "Bills Receivable", "Cash" and the several items specified under "Other Accounts".

P[illegible] t the [illegible] tion [illegible] asse[illegible]

(c) a certificate signed by the same persons as are required by this Act to sign the balance sheet and by the auditor certifying that no parts of the assets of the life insurance fund has been directly or indirectly applied in contravention of the provisions of this Act relating to the application and investment of life insurance funds, and

(d) certificates signed by the auditor (which shall be in addition to any other certificate or report which he is required by law to give with respect to the balance sheet) certifying—

(i) that he has verified the cash balances and the securities relating to the insurer's loans, reversions and life interests and investments,

(ii) to what extent if any, he has verified the investments and transactions relating to any trusts undertaken by the insurer as trustee, and

(iii) in the case of a combined balance sheet, that he has audited the balance sheet and accounts of every insurer whose assets and liabilities are incorporated therein or that any such balance sheet and accounts which have not be[illegible] The said certific[illegible] have been made b[illegible] with respect to the balance-sheet and accounts of any insurer whose assets and liabilities are incorporated in the combined balance sheet

8 If the values shown in the balance sheet in respect of 'Holdings in Subsidiary Companies' or House property (i) in India (ii) out of India have [illegible]

of the reason therefor

9 For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them namely —

(a) 'combined balance sheet' includes any combined statement made by an insurer of assets and liabilities in the form of a balance sheet which includes the assets and liabilities of any other insurer, and

(b) 'market value' means as respects any asset the market value thereof as ascertained from published market quotations or, if there be no such value, its fair value as between a willing buyer and a willing seller

FORMS

FORM A

Forms of Balance Sheet

Balance Sheet of 19

	Life and Annuity Business (1)	Other Classes of Business (2)*	Total		Life and Annuity Business (1)	Other Classes of Business (2)*	Total
	Rs A P	Rs A P	Rs A P		Rs A P	Rs A P	Rs A P
Shareholders Capital (each class to be stated separately)				Loans			
Authorised				On *Mortgages of property* within British India			
Shares of Rs each Rs				On Mortgages of property outside British India			
Subscribed				On Security *of* municipal and other public rates			
Shares of Rs each Rs				On Stocks and Shares			
Called up				On Insurer s policies within their surrender value			
Shares of Rs each Rs				On Personal security			
Less Unpaid calls Rs				To Subsidiary Companies (other than Reversionary) (*f*)			
Reserve or Contingency Accounts (*a*)				*Reversions and life Interests*			
Investment Reserve Account				Reversions and Life Interests purchased			
Profit and Loss Appropriation Account Balance				Loans on Reversions and Life Interests			
				Debentures and Debenture Stocks of Subsidiary Reversionary Companies (*f*)			
Balances of Funds and Accounts				Ordinary Stocks and Shares of Subsidiary *Reversionary* Companies (*f*)			
Life Insurance Fund				Loans to Susidiary Reversionary Companies (*f*)			
Fire Insurance Business Account							
Marine Insurance Business Account							

Accident and Miscellaneous Insurance Business Account			Investments		
Other accounts if any (to be specified) (*l*)			Deposit with the Reserve Bank of India (*Securities to be specified*)		
Pension or Superannuation Accounts (*b*)			Indian Government Securities		
Debenture Stock * per cent			Provincial Government Securities		
Loans and Advances (*c*)			British, British Colonial and British Dominion Government Securities		
Bills Payable (*c*)			Foreign Government Securities		
Estimated Liability in respect of outstanding claims whether due or intimated (*d*)			Indian Municipal Securities		
Annuities due and unpaid (*d*)			British and Colonial Securities		
Outstanding Dividends			Foreign Securities		
Amounts due to Other Persons or Bodies carrying on Insurance Business (*c*)			Bonds Debentures Stocks and other Securities whereon Interest is guaranteed by the Indian Government or a Provincial Government		
Sundry Creditors (including outstanding and accruing expenses and taxes) (*c*)			Bonds Debentures Stocks and other Securities whereon Interest is guaranteed by the British or any Colonial Government ..		
Other sums owing by the insurer (*particulars to be given*) (*c*)			Bonds Debentures Stocks and other Securities whereon Interest is guaranteed by any Foreign Government		
Contingent Liabilities (to be specified) (*c*)			Debentures of any railway in India		
			Debentures of any railway out of India ..		
			Preference or guaranteed Shares of any railway in India		
			Preference or guaranteed Shares of any railway out of India		
Rs ——			Railway Ordinary Stocks (i) in India (ii) out of India ..		
			Other Debentures and Debenture Stock of Companies incorporated (i) in India (ii) out of India		
			Other guaranteed and Preference Stocks and Shares of Companies incorporated (i) in India (ii) out of India		
			Other Ordinary Stocks and Shares of Companies incorporated (i) in India (ii) out of India		
			Carried over		

FORM A—*Contd*

—	Life and Annuity Business (1)	Other Classes of Business (2)*	Total	—	Life and Annuity Business (1)	Other Classes of Business (2)*	Total
	Rs A P	Rs A P	Rs A P	Brought forward	Rs A P	Rs A P	Rs A P
				Holdings in Subsidiary Companies (*f*)			
				House property (i) in India (ii) out of India			
				Freehold and Leasehold ground rents and rent charges			
				Agent s Balances			
				Outstanding Premiums (*g*)			
				Interest Dividends and Rents outstanding (*d*)			
				Interest, Dividends and Rents accruing but not due (*d*)			
				Amounts due from Other Persons or Bodies carrying on Insurance Business (*h*)			
				Sundry Debtors (*i*)			
				Bills Receivable			
				Cash			
				At Bankers on Deposit Account			
				At Bankers on Current Account and in hand			
				At Call and Short Notice (*j*)			
				Other Accounts (to be specified) (*l*)			

* Assets and Liabilities, Shareholders Capital and Reserves, not allocated to any class of business specified in column (1) must be shown in column (2)

Notes

(a) The Reserves or Contingency Accounts must be separately stated

(b) If the insurer has not full and unrestricted control of the assets constituting the Pension or Superannuation Accounts either those Accounts and the assets and liabilities

the balance sheet

(e) Such items as amount of liability in respect of bills discounted uncalled capital

(f) As respects life and annuity business full particulars of holdings in and loans

amongst the liabilities on the other side of the balance sheet

(h) The aggregate amount owing by a subsidiary company or subsidiary companies is to be shown separately from all other assets and the aggregate amount owing to a subsidiary company or subsidiary companies is to be shown separately from all other liabilities

If not

nch must

prelimi

discount

re years,

balance being loss on Profit and Loss Appropriation Accounts etc The amounts included in the balance sheet must not be in excess of cost

(l) Under the head Other accounts if any (to be specified) on the left hand side, fines realized from the staff and their contribution towards the provident fund if any should be shown under separate sub heads

FORM AA.

Classified Summary of the Indian Assets of the

Company on 19

Class of Asset	Book value as per (a) below	Market value as per (b) below	Remarks as per (c) below
	Rs	Rs	
(1) Government of India Securities			
(2) Indian Provincial Government Securities			
(3) Indian Municipal Port and Improvement Trust Securities including Debentures			
(4) Debentures of Indian Railways			
(5) Guaranteed and Preference Shares of Indian Railways			
(6) Annuities of Indian Railways			
(7) Ordinary Shares of Railways in India			
(8) Other Debentures of concerns in India			

Class of Asset	Book value as per (a) below	Market value as per (b) below	Remarks as per (c) below
	Rs	Rs	
(9) Other Guaranteed and Preference Shares of concerns in India			
(10) Other Ordinary Shares of concerns in India			
(11) Loans on the Company's policies effected in India and within their surrender value			
(12) Loans on Mortgage of property in India			
(13) Loans on Personal Security to persons domiciled and resident in India			
(14) Other loans granted in India (particulars to be stated			
(15) Land and House Property in India			
(16) Cash on Deposit in banks in India			
(17) Cash in Hand and on current account in banks in India			
(18) Agents balances and outstanding premiums			
(19) Interest, dividends and rents either outstanding or accrued but not due			
(20) Other assets in India (to be specified)			

The statement shall show—

(a) the value for which credit is taken in the balance sheet for each of the abovementioned classes of assets

(b) the market value of such of the abovementioned classes of assets as has been ascertained from published quotations after deduction of accrued interest included in market prices in those cases where accrued interest is included elsewhere in the balance sheet,

(c) how the value of such of the abovementioned classes of assets as has not been ascertained from published quotations has been arrived at, and

(d) the rates of exchange at which the values of the assets other than in rupee currency have been converted into rupees

The market values need not be shown separately where they are not less than the book values and a certificate to that effect is appended to the statement

No amounts on account of any of the following items may be entered in the statement —

Goodwill

Preliminary, formation, organisation or development expenses.

Commission or discount on shares or debentures issued

Commuted Commission

Expenditure carried forward to be written off in future years

THE SECOND SCHEDULE

(*See* section 11)

Regulations and Forms for the preparation of Profit and Loss Accounts.

PART I

Regulations

1 The [illegible] and Loss [illegible] received or [illegible] whether actually paid or not

2 Deductions from Interest, Dividends and Rents to be shown in respect of income tax must include all amounts in respect of British Indian income tax whether or not it has been or is to be deducted at source or paid direct

3 The Interest, Dividends and Rents, *less* income tax thereon shown in the Revenue Accounts for any classes of business other than life insurance business, including annuity business may, if the insurer so desires, be included with the corresponding items in the Profit and Loss Account

PART II
FORMS
FORM B

Form of Profit and Loss Account

Profit and Loss Account of for the year ended 19

	Rs A P		Rs A P
British Indian Taxes on the Insurer's Profits (not applicable to any particular Fund or Account)		Interest Dividends and Rents (not applicable to any particular Fund or Account) Rs	
		Less—Income tax thereon Rs	
Expenses of Management (not applicable to any particular Fund or Account)*		Profit on realisation of Investments (not credited to Reserves or any particular Fund or Account)	
Loss on Realisation of investments (not charged to Reserves or any particular Fund or Account)		Appreciation of Investments (not credited to Reserves or any particular Fund or Account)	
Depreciation of Investments (not charged to Reserves or any particular Fund or Account)		Profit transferred from Revenue Accounts (details to be given)	
Loss transferred from Revenue Accounts (details to be given)		Transfer Fees	
Other Expenditure (to be specified)		Other Income (to be specified)	
Balance for the year carried to Appropriation Account		Balance being loss for the year carried to Appropriation Account	

* If any sum has been deducted from this item and entered on the assets side of the balance sheet the amount must be shown separately

FORM C

Form of Profit and Loss Appropriation Account

Profit and Loss Appropriation Account of for the year ended 19

	Rs A P		Rs A P
Balance being loss brought forward from last year		Balance brought forward from last year Rs	
Balance being loss for the year brought from Profit and Loss Account (as in Form B)		*Less* Dividends since paid in respect of last year (to be specified and if free of tax to be so stated)* Rs	
Dividends paid during the year on account of the current year (to be specified and if free of tax to be so stated)			
Transfers to any particular Funds or Accounts (details to be given)		Balance for the year brought from Profit and Loss Account (as in Form B)	
Balance at end of the year as shown in the balance Sheet		Balance being loss at end of the year as shown in the Balance Sheet	

* *Note* —This item may be shown on the other side of the account if preferred

THE THIRD SCHEDULE

(*See* section 11.)

Regulations and Forms for the preparation of Revenue Accounts

PART I

Regulations.

1. Form D is as set out in Part II of this Schedule, appropriate for life insurance business, but a separate revenue account must be prepared for every class of business in respect of which the insurer is required to maintain a separate account.

2. Form F is set out in Part II of this Schedule, appropriate for fire insurance business. A separate revenue account in the same form must be prepared for accident and miscellaneous insurance including workmen's compensation and motor car insurance. Form E is, as set out in Part II of this Schedule, appropriate for marine insurance business.

3. If any combined revenue account is for any purpose issued by an insurer it must be in accordance with the forms specified in this Schedule and must clearly show on the face thereof that it is a combined revenue account and must set out fully the name of every insurer required to make separate returns under this Act whose revenue and expenditure have been included therein; if the revenue and expenditure of any person not being an insurer are included in a combined revenue account, the fact must be stated thereon.

4. The items on the income side of the revenue account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid on not.

5. Re-insurance premiums, whether on business ceded or accepted, are to be brought into account gross (*i.e.*, before deducting commissions) under the head of premiums.

6. As respects life insurance business the following statements shall be furnished to the Superintendent of Insurance every year showing details provided for in a Form pertaining thereto :—

(A) A statement in form DD as set forth in Part II of this Schedule.
(B) A statement in form DDD as set forth in Part II of this Schedule.
(C) A statement in form DDDD as set forth in Part II of this Schedule.

7. The following information shall be supplied in addition to the revenue account, namely, the gross premium written in India for life, fire marine and accident and miscellaneous insurance business.

8. Any office premises which form part of the assets of a life insurance fund must be treated as an interest earning investment, and accordingly, in the revenue account for life insurance business a fair rent for the premises must be included under the heading "Interest, Dividends and Rents" and in the revenue account for every class of business for which the premises are used proper charges for the use thereof must be included under the heading "Expenses of Management".

9. Where an insurer carries on the business of life insurance in conjunction with any other class of insurance business the expenses of management charged to the life insurance revenue account must not include more than a reasonable proportion of the common expenses and in particular, no such account must be charged with more than a fair sum for the use of any office premises having regard to the income from the various classes of business carried on and to the extent to which the premises are used for the purposes of each class of business.

10 Deduc ... must include ... or is to be dedu ... so deducted in the life insurance Revenue Account is British Indian United ... x, but the income tax to be shown ... ther classes of business is British

PART II

FORMS

FORM D

Form of Revenue Account applicable to Life Insurance Business

Revenue Account of ... for the year ended ... 19
in respect of ... Business

—	Business within India	Business out of India (a)	Total	—	Business within India	Business out of India (a)	Total
	Rs	Rs	Rs		Rs	Rs	Rs
Claims under Policies (including provision for claims due or intimated) less Re insurances				Balance of Fund at the beginning of the year			
By death				Premiums, less Re insurances—			
By maturity				(i) First year premiums			
Annuities, less Re insurances				(ii) Renewal premiums			
Surrenders (including Surrenders of bonus), less Re insurances				(iii) Single premiums			
Bonuses in cash less Re insurances				Consideration for Annuities granted, less Re insurances (c)			
Bonuses in Reduction of Premiums, less Re insurances							
Commission (less that on Re insurances)				Interest Dividends and Rents Rs			
				Less—Income tax thereon (l) Rs			
Expenses of Management (b)—				Registration Fees			
1 Commission and allowances				Other Income (to be specified (e))			
2 Salaries etc (other than to agents and those contained in item No 1)				Loss transferred to Profit and Loss Account			
3 Travelling expenses				Transferred from Appropriation Account			
4 Directors fees							
5 Auditors fees							
6 Law charges							
7 Advertisements							
8 Printing and							

—	Business within India	Business out of India (a)	Total	—	Business within India	Business out of India (a)	Total
	Rs	Rs	Rs.		Rs.	Rs	Rs
Stationery							
9 Other expenses of management (accounts to be specified)							
10 Other payments (accounts to be specified)							
11 Rents for offices belonging to and occupied by the insurer							
12 Rents of other offices occupied by the insurer							
Bad Debts							
United Kingdom, British Indian, Dominion and Foreign Taxes							
Other Expenditure (to be specified)							
Profit transferred to Profit and Loss account							
Balance of Fund at the end of the year as shown in the Balance Sheet							

Notes

(a) In the case of an insurer having his head office in British India these columns apply only to business the premiums in respect of which are payable outside India

(b) [illegible] ntered on the assets side of [illegible] separately Under this item [illegible] ector shall be shown separately

(c) All single premiums for annuities, whether immediate or deferred, must be included under this heading.

(d) British Indian United Kingdom, Foreign and Dominion income tax on Interest, Dividends and Rents must be shown under this heading less any rebates of income tax recovered form the revenue authorities in respect of expenses of management The separate heading on the other side of the account is for United Kingdom, British Indian, Foreign and Dominion taxes other than those shown under this item

(e) Under the head "Other Income" fines if any, realised from the staff must be shown separately All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside British India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account

(f) In the case of an insurer having his principal place of business outside British India the expenses of management for business out of India and total business need not be split upto the several sub heads if they are not so split up in his own country

FORM DD

Classified statement of life insurance policies of the ______ Company, for the year ending ______ 19 .

	New life insurance business in respect of which a premium has been paid in the year				Total life insurance business in force at end of the year		
	Number of policies	Sums insured and annuities per annum	Single premiums (including consideration for immediate annuities and all other premiums paid at the outset where no subsequent premium is payable)	Yearly renewal premium income	Number of policies	Sums insured with bonuses and annuities per annum	Premium income for which credit has been taken in the revenue account
Ordinary policies		Rs	Rs	Rs		Rs	Rs
In India							
Out of India							
Total							
Annuity contracts, etc							
In India							
Out of India							
Total							
Group insurance policies							
In India							
Out of India							
Total							

The amounts should be stated to the nearest rupees and after deduction of re insurances

—	Business within India.	Business out of India (a)	Total	—	Business within India	Business out of India (a)	Total.
	Rs	Rs	Rs.		Rs.	Rs	Rs
Stationery							
9 Other expenses of management (accounts to be specified)							
10 Other payments (accounts to be specified)							
11 Rents for offices belonging to and occupied by the insurer							
12 Rents of other offices occupied by the insurer							
Bad Debts							
United Kingdom, British Indian, Dominion and Foreign Taxes							
Other Expenditure (to be specified)							
Profit transferred to Profit and Loss account							
Balance of Fund at the end of the year as shown in the Balance Sheet							

Notes

(a) In the case of an insurer having his head office in British India, these columns apply only to business the premiums in respect of which are payable outside India

(b) If any sum has been deducted from this item and entered on the assets side of the balance sheet, the amount so deducted must be shown separately Under this item the salary paid to the managing agent or managing director shall be shown separately from the total amount paid as salaries to the remaining staff

(c) All single premiums for annuities, whether immediate or deferred, must be included under this heading

(d) [illegible]

(e) Under the head "Other Income" fines if any, realised from the staff must be shown separately All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside British India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account

(f) In the case of an insurer having his principal place of business outside British India, the expenses of management for business out of India and total business need not be split upto the several sub heads, if they are not so split up in his own country

FORM DDDD.

Particulars of the policies forfeited or lapsed in the last financial year under review less those revised and reinstated for full benefits, classified according to the year in which they were issued

Financial year in which the policies were issued.	Number of policies forfeited or lapsed	Sum insured under policies forfeited or lapsed
		Rs
Year ending 19 being the year under review .. .		
Year ending 19 , being the year previous to that under review		

And so on the number of and sum insured under policies forfeited or lapsed in the last financial year under review being stated after classification according to each of the preceding years in which they were issued

A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted

Insurers having their principal place of business in British India shall give the information required in the form separately for business transacted in India and business transacted outside India and insurers having their principal place of business outside British India will furnish information regarding business transacted in India only

FORM E

Form of Revenue Account applicable to Marine Insurance Business

Revenue Account of for the year ended 19 ,

in respect of Marine Insurance Business

—	Current year	Last preceding year	Previous years	Total	—	Current year	Last preceding year	Previous years	Total
	Rs	Rs	Rs	Rs		Rs	Rs	Rs	Rs
*Claims paid (less Salvages and Re insurances (a) (c)					Balance of Marine Insurance Business Account at beginning of the year				
*Commission					Balances				
*Expenses of Management (b)					Additional Reserve (if any)				
*Bad Debts					*Premiums (less Returns Re insurances Brokerages and Discount) (c)				
United Kingdom British Indian Dominion and Foreign Taxes					Interest, Dividends and Rents Rs Less—Income tax thereon Rs				
*Other Expenditure (to be specified)					*Other Income (to be specified) (d)				
Profit transferred to Profit and Loss Account					Loss transferred to Profit and Loss Account				
Balance of Marine Insurance Business Account at end of year as shown in the Balance Sheet					Transferred from Appropriation Account				
Balances									
Additional Reserve (if any)									

Notes

(a) This heading must include all expenses directly incurred in settling claims

(b) If any sum has been deducted from this item and entered on the assets side of the balance sheet the amount so deducted must be shown separately

(c) Where the account is furnished under the provisions of section 11 of the Insurance Act 1938 separate figures for claims paid to claimants in British India and claimants outside British India and for premiums derived from business effected in British India and effected outside British India must be given

(d) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside British India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account

*— ... provisions of clause (b) of sub section (2) ... insurer to whom that section applies ... d business out of British India must ... Against all other items the total

FORM F

Form of Revenue Account applicable to Fire Insurance Business and to Accident and Miscellaneous Insurance Business including Workmen's Compensation and Motor Car Insurance Business

Revenue Account of for the year ended 19 ,

in respect of Business

	Rs		Rs
*Claims under Policies less Re insurances (a)(d) Paid during the year Rs Total estimated liability in respect of outstanding claims at end of the year whether due or intimated Rs Total Less—Outstanding at end of previous year (b) Rs		Balance of Account at beginning of the year Reserve for Unexpired Risks Rs Additional Reserve (if any) Rs	
*Commission		*Premiums less Re insurances (d)	
*Expenses of Management (c)		Interest Dividends and Rents Rs Less—Income tax thereon Rs	
*Bad Debts		*Other Income (to be specified) (e)	
United Kingdom Foreign and Dominion Taxes		Loss transferred to Profit and Loss Account	
*Other Expenditure (to be specified)		Transferred from Appropriation Account	
Profit transferred to Profit and Loss Account			
Balance of Account at the end of the year as shown in the Balance Sheet Reserve for Unexpired Risks being per cent of premium income of year Rs Additional Reserve (if any) Rs			
Rs		Rs*	

Notes

(a) This heading must include all expenses directly incurred in settling claims

(b) If in any year the claims actually paid and those still unpaid at the end of that year in respect of the previous year or years are in excess of the amount included in the previous year s Revenue Account as provision for outstanding claims then the amount of such excess must be shown in the Revenue Account

(c) If any sum has been deducted from this item and entered on the assets side of the balance sheet the amount so deducted must be shown separately

[illegible]

(e) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside British India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account

* [illegible] ise (b) of sub section (2) [illegible] that section applies [illegible] of British India must [illegible] all other items the [illegible] amount for the business as a whole may be given

THE FOURTH SCHEDULE.

(*See* section 13)

Regulations for the preparation of Abstracts of Actuaries' Reports and Requirements applicable to such Abstracts

PART I

Regulations

1 Abstracts and Statements must be so arranged that the numbers and letters of the paragraphs correspond with those of the paragraphs of Part II of this Schedule

2 In showing the proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums, in accordance with the requirements of paragraph 3 of Part II of this Schedule, no credit is to be taken for any adjustments made in order to secure that no policy is treated as an asset.

3 (1) The average rate of interest yielded in any year by the assets constituting a life insurance fund shall, for the purposes of paragraph 4 of Part II of this [illegible]

[illegible]

year after deduction of income tax charged thereon (any refund of income-tax in respect of expenses of management made during the year being taken into account), and the mean fund of the year shall be ascertained by adding a sum equal to one half of the amount of the life insurance fund at the beginning of the year to a sum equal to one half of that fund at the end of the year, and deducting from the aggregate of those two sums an amount equal to one-half of the interest of the year

(2) For the purposes of the calculation aforesaid either—

(a) all profits and income arising during the year from sums invested in reversions shall be included in the interest credited to the life insurance fund during the year, or

[illegible]

date, and explaining the manner in which the said average rate has been calculated

(3) The information given in accordance with the requirements of the said paragraph 4 shall show clearly by which of the methods hereinbefore in this regulation mentioned the sums invested in reversions and the profits and income arising therefrom have been dealt with

4 Every abstract prepared in accordance with the requirements of Part II of this Schedule shall be signed by an actuary and shall contain a certificate by him to the effect that he has satisfied himself as to the accuracy of the valuations made for the purposes thereof and of the valuation data

Provided that in the case of an abstract prepared on behalf of an insurance company, if the actuary who signs the abstract is not a permanent officer of the company, the certificate as to the accuracy of the valuation data shall be given and signed by the principal officer of the company and the actuary shall include in the abstract a statement signed by him showing what precautions he has taken to ensure the accuracy of the data.

5 For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely —

'extra premium' means a charge for any risk not provided for in the minimum contract premium,

"inter valuation period'
valuation date of that valuat
valuation in connection with
under the enactments repealed by this Act, or, in a case where no such valuation has been made in respect of the class of business in question, from the date on which the insurer began to carry on that class of business,

'maturity date' means the fixed date on which any benefit will become payable either absolutely or contingently,

"net premiums' means as respects any valuation the premiums taken credit for in the valuation,

'premium term' means the period during which premiums are payable

"valuation date' means as respects any valuation the date as at which the valuation is made

PART II

Requirements applicable to an Abstract in respect of Life Insurance Business

The following tabular statements shall be annexed to every abstract prepared in accordance with the requirements of this Part of this Schedule namely —

(a) a Consolidated Revenue Account in the Form G annexed to this Part of this Schedule, for the inter valuation period (except that it shall not be necessary to prepare such an account in respect of any class of business so long as the insurer deposits annually with the Superintendent of Insurance an abstract in respect of that class of business) and

(b) a Summary and Valuation in the Form H annexed to this Part of this Schedule of the policies included at the valuation date in the class of business to which the abstract relates and

(c) a Valuation Balance Sheet in the Form I annexed to this Part of this Schedule and

(d) a statement in Form DDD as set forth in Part II of the Third Schedule of the additions to and deductions from the number of policies and the sums insured thereunder for each class of life insurance and

(e) a statement in From DDDD as set forth in Part II of the Third Schedule of particulars of policies forfeited or lapsed under each class of life insurance

and every such abstract shall show —

1 The valuation date

2 The general principles and full details of the methods adopted in the valuation of each of the various classes of insurances and annuities shown in the said Form H including statements on the following points —

(a) whether the principles were determined by the instruments constituting the company or by its regulations or bye laws or how otherwise

(b) the method by which the net premiums have been arrived at and how the ages at entry premium term and maturity dates have been treated for the purpose of the valuation

(c) the methods by which the valuation age period from the valuation date to the maturity date and the future premium terms have been treated for the purpose of the valuation

(d) the rate of bonus taken into account where by the method of valuation definite provision is made for the maintenance of a specific rate of bonus

(e) the method of allowing for—

(i) the incidence of the premium income, and

(ii) premiums payable otherwise than annually,

(f) the methods by which provision has been made for the following matters, namely —

(i) the immediate payment of claims,

(ii) future expenses and profits in the case of limited payment and paid up policies,

(iii) the reserve in respect of lapsed policies not included in the valuation, but under which a liability exists or may arise, and whether any reserves have been made for the matters aforesaid,

(g) whether under the valuation method adopted any policy would be treated as an asset, and, if so, what steps, if any, have been taken to eliminate such asset,

(h) a statement of the manner in which policies on under average lives and policies subject to premiums which include a charge for climatic, military or other extra risks have been dealt with, and

(i) the rates of exchange at which liabilities in respect of policies issued in foreign currencies have been converted into rupees and what provision has been made for possible increase of liability arising from future variations in the rates of exchange

3 The table of mortality used, and the rate of interest assumed in the valuation

4 The proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums separately specified in respect of insurances with immediate profit, with deferred profits, with profits under discounted bonus systems and without profits

[illegible] he assets, whether invested or [illegible] each of the years covered by

6 The basis adopted in the distribution of profits as between the insurer and policy holders, and whether such basis was determined by the instruments constituting the company, or by its regulations or bye laws, or how otherwise

7 The general principles adopted in the distribution of profits among policy holders, including statements on the following points, namely —

(a) whether the principles were determined by the instruments constituting the company, or by its regulations or bye-laws, or how otherwise,

(b) the number of years' premiums to be paid, period to elapse and other conditions to be fulfilled before a bonus is allotted,

(c) whether the bonous is allotted in respect of each year's premium paid or in respect of each completed calendar year or year of assurance or how otherwise, and

(d) whether the bonus vests immediately on allocation, or, if not the conditions of vesting

8 (1) The total amount of profits arising during the inter valuation period including profits paid away and sums transferred to reserve funds or other accounts during that period, and the amount brought forward from the preceding valuation (to be stated separately) and the allocation of such profits—

(a) to interim bonus paid,

(b) among policy holders with immediate participation, giving the number of the policies which participated and the sum assured thereunder (excluding bonuses)

(c) among policy holders with deferred participation giving the number of the policies which participated and the sums assured thereunder (excluding bonuses)

(d) among policy holders in the discounted bonus class, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses),

(e) to the insurer or, in the case of an insurance company, among shareholders or to shareholders accounts (any such sums passed through the accounts during the inter valuation period to be separately stated),

(f) to every reserve fund or other fund or account (any such sums passed through the accounts during the inter valuation period to be separately stated),

(g) as carried forward unappropriated

(7) *Specimens of bonuses allotted as at the valuation date to policies for one thousand rupees*—

(a) for the whole term of life effected at the respective ages of 20 30 and 40, and having been in force respectively for five years, ten years and upwards at intervals of ten years, and

(b) for endowment insurances effected at the respective ages of 20 30 and 40 for endowment terms of fifteen, twenty and thirty years, and having been in force respectively for five years, ten years and upwards at intervals of ten years,

together with the amounts apportioned under the various manners in which the bonus is receivable

9 A statement in Form J annexed to this Part of this Schedule of specimen policy reserve values held or required to be held according to the methods adopted in the valuation, and specimen minimum surrender values in respect of whole life insurance policies for Rs 1 000 with premiums payable throughout life effected at the respective ages of 20 30 40 and 50, and immediately on payment of the first second third fourth sixth seventh eighth ninth, tenth fifteenth and twentieth annual premium, with similar specimen policy
of whole life insurance
endowment insurance

10 A statement showing how the liability under any disability clause in a policy has been determined in the valuation with full information of the tables of sickness or accident used for the purpose

FORM G

Consolidated Revenue Account of for years commencing and ending

	Business within India	Total		Business within India	Total
	R	Rs		Rs	Rs
Claims under Policies (including provision for claims due or intimated) less Re insurances—			Balance of Life Insurance Fund at the beginning of the period		
By death			Premiums less Re insurances		
By maturity			Consideration for Annuities Granted less Re insurances (b)		
Annuities less Re insurances			Interest dividends and Rents Rs		
Surrenders (including Surrenders of Bonuses) less Re insurances			Less—Income tax thereon (c) Rs		
Bonuses in Cash less Re insurances			——		
Bonuses in Reduction of Premium less Re insurances					

	Business within India	Total		Business within India	Total
Commission (less that on Re insurances)			Registration Fees		
Expenses of Management (a)—Agents and Canvassers allowance			Other Income (to be specified)		
Salaries &c (other than to Agents and Canvassers)			Loss transferred to Profit and Loss Account		
Travelling expenses			Transferred from Appropriation Account		
Directors fees					
Auditors fees					
Medical fees					
Law charges					
Advertising					
Printing and Stationery					
Other expenses of management (accounts to be specified)					
Other payments (accounts to be specified)					
Rents for offices belonging to and occupied by the company					
Rents of other offices occupied by the company					
United Kingdom, British Indian Dominion and Foreign Taxes					
Bad Debts					
Other Expenditure (to be specified)					
Profit transferred to Profit and Loss Account					
Balance of Life Insurance Fund at end of the period as shown in the Balance Sheet					
Rs			Rs		

Notes

(a) If any sum has been deducted from this item and entered on the assets side of the balance sheet the amount so deducted must be shown separately

(b) All single premiums for annuities whether immediate or deferred must be included under this heading

(c) British Indian United Kingdom Foreign and Dominion income tax on Interest, Dividends and Rents must be shown under this heading less any rebates of income tax recovered from the revenue authorities in respect of expenses of management The separate heading on the other side of the account is for United Kingdom, British Indian Foreign and Dominion taxes, other than those shown under this item

(d) In the case of an insurer having his principal place of business outside British India, the expenses of management for the total business need not be split up into the several sub heads, if they are not so split up in his own country

FORM H

Summary and Valuation of the Policies of as at 19

Description of Transactions	Particulars of the Policies for Valuation					Valuation			
	Number of policies	Sums Assured	Bonuses	Office Yearly Premiums	Net Yearly Premiums	Sums Assured and Bonuses	Office Yearly Premiums	Net Yearly Premiums	Net Liabilities
DIVISION I *Insurances*									
Group A —									
With immediate participation in profits									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total Insurances									
Deduct—Re insurances									
Net insurances									
Group B —									
With deferred participation in profits									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total insurances									
Deduct—Re insurances									
Net insurances									
Group C —									
Under discounted bonus systems									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total insurances									
Deduct—Re insurances									
Net insurances									
Total insurances with profits									

FORM H—*Contd*

Summary and Valuation of the Policies of as at 19

Description of Transactions	Particulars of the Policies for Valuation					Valuation			
	Number of policies	Sums Assured	Bonuses	Office Yearly Premiums	Net Yearly Premiums	Sums Assured and Bonuses	Office Yearly Premiums	Net Yearly Premiums	Net Liabilities
Group D —									
Without participation in profits									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total insurances									
Deduct—Re insurances									
Net insurances									
Total insurances without profits									
Total of the insurances shown in all groups									
Deduct—Re insurances									
Net amount of insurances									
Adjustments if any (to be separately specified)									
DIVISION II *Annuities on Lives*									
Immediate Annuities									
Deferred Annuities with return of premiums									
Deferred Annuities without return of premiums									
Other classes (to be specified)									
Total Annuities									
Deduct—Re insurances									
Net Annuities on lives									
Total of the results (after deduction of Re insurances)									

Notes

1 Items in this Summary are to be stated to the nearest rupee

2 No policy of insurance upon the lives of a group of persons whereby sums assured are payable in respect of the several persons included in the group is to be included in Groups A B C or D of this Form any such policies must be shown in a separate Group which must be added to the Form

3 If policies without participation in profits but with a guaranteed rate of bonus are issued they must be separately specified in Group D of this Form

4 Policies under which there is a waiver of premiums during disability must be shown as a separate class

5 Separate forms must be prepared in respect of classes of policies valued by different tables of mortality or at different rates of interest or involving the valuation of net premiums on different bases

6 In cases where separate valuations of any portion of the business are required
ed on such valuations are
pect of the business so
the total sums assured
t liability on the bases as
to mortality and interest adopted in each such place with a statement as to such bases respectively

7 Office and net premiums and the values thereof must be shown after deduction of abatements made by the application of bonus

FORM I

Valuation Balance Sheet of as at 19

	Rs		Rs
Net liability under business as shown in the Summary and Valuation of Policies		Balance of Life Insurance Fund as shown in the Balance Sheet	
Surplus if any		Deficiency if any	

Note —If the proportion of surplus allocated to the insurer or in the case of an insurance company to shareholders is not uniform in respect of all classes of insurances the surplus must be shown separately for the classes to which the different proportions relate

FORM J

Specimen policy reserve values and minimum surrender values under a policy for Rs 1,000

Number of premiums paid	Age at entry 20		Age at entry 30		Age at entry 40		Age at entry 50.	
	Reserve value	Minimum surrender value	Reserve value	Minimum surrender value	Reserve value	Minimum surrender value.	Reserve value.	Minimum surrender value
1								
2								
3								
4								
5								
6								
7.								
8								
9								
10								
15								
20								

NOTE —Items in this Form to be stated to the nearest rupee.

THE INSURANCE (AMENDMENT) ACT, 1939.

(ACT NO. XI OF 1939.)

(Received the assent of the Governor-General on the 28th March, 1939)

An Act to amend the Insurance Act, 1938

WHEREAS it is expedient to amend the Insurance Act, 1938,* for the purposes hereinafter appearing, It is hereby enacted as follows —

Notes —"Detailed scrutiny of the Insurance Act 1938, has revealed a considerable nu[illegible]
int
out
the
to
under the Act which would seriously impede the development of their business outside British India The Amending Bill is designed to gives relief in such cases without impairing the security for policyholders in British India '—*Statement of Objects and Reasons*

Short title and commencement

1 (1) This Act may be called the Insurance (Amendment) Act, 1939

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf

Amendment of section 2 Act IV of 1938

2. In section **2** of the Insurance Act, 1938 (hereinafter referred to as the said Act),—

(*a*) to sub-clause (*a*) of clause (9) the following shall be added, namely —

"or

(*iii*) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in British India, ",

(*b*) in clause (11), after the word "double" the words "or triple" shall be inserted

Insertion of new sections 2A and 2B

2A In Part II of the said Act, after the heading "PROVISIONS APPLICABLE TO INSURERS" the following sections shall be inserted, namely —

Insurers to be subject to this Act while liabilities remain unsatisfied

"**2A** Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in British India in respect of business of that class remain unsatisfied or not otherwise provided for

This Act not to apply to certain insurers ceasing to enter into new contracts before commencement of Act

2B The provisions of this Act shall not apply to an insurer as defined in paragraph (*i*) or (*iii*) of sub-clause (*a*) of clause (9) of section 2 in relation to any class of his insurance business where such insurer has ceased, before the commencement of this Act, to enter into any new contracts of that class of business"

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* IV of 1938

Notes —' The pos t on of th in . . . —l

Amendment of section 7

3 In section 7 of the said Act,—

(a) in clause (j) of sub section (1), after the words "or its cargo" the words "and no other type of marine insurance" shall be inserted,

(b) in sub-section (2) for the words "transacted' the words "carried on' shall be substituted,

(c) in sub section (3) and in the proviso thereto, for the words and figures "the 1st day of January, 1939," the words "the expiry of four months from the commencement of this Act" shall be substituted,

(d) in sub-section (4), after the words 'in the case of an insurer' the words "to whom that sub-section applies,' shall be inserted

Amendment of section 8

4 In sub-section (1) of section 8 of the said Act, after the word and figure "section 7" the words and figure "or section 98' shall be inserted

Amendment of section 9

5 In section 9 of the said Act, after the word and figure 'section 7" the words and figure 'or section 98' shall be inserted

6

Amendment of section 16

7 In sub section (2) of section 16 of the said Act,—

(a) for the words "four copies' the words "four certified copies shall be substituted,

(b) in clause (a), after the words "a statement' the words "audited by a person duly qualified under the law of the insurer s country" shall be inserted,

(c) in clause (b), after the words 'applicable to that class of business" the words "and similarly audited," shall be inserted

Amendment of section 17

8 In section 17 of the said Act, —

(a) after the words and figure "incorporated under the Indian Companies Act, 1913,' the words and figures "or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby," shall be inserted,

(b) for the words "his accounts and balance sheet' the words "his balance sheet and accounts' shall be substituted,

(c) for the words 'a copy of such accounts and balance-sheet the words "copies of such balance sheet and accounts" shall be substituted,

(d) for the words "where such copy is so sent" the words 'where such copies are so sent' shall be substituted,

(e) for the words "to file a balance-sheet" the words "to file copies of the balance sheet and accounts" shall be substituted,

(f) for the words "the copy of the accounts and balance sheet so sent' the words "such copies so sent' shall be substituted

Insertion of new section 17A

9 After section **17** of the said Act the following section shall be inserted, namely —

"17A Nothing in this Act shall apply to the preparation of accounts by an insurer and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared audited and submitted in accordance with the law in force immediately before the commencement of this Act'

This Act not to apply to preparation of accounts, etc, for periods prior to this Act coming into force

Amendment of section 27

10 In sub section (1) and sub-section (2) of section **27** of the said Act,—

(i) after the word and figure "section 7' the words and figure "or section 98' shall be inserted,

(ii) after the words "loans granted by him on policies of life insurance' the words "maturing for payment in India and within their surrender values" shall be inserted

Amendment of section 28

11 In sub-section (1) of section **28** of the said Act,—

(a) for the word 'fourteen", in both places where it occurs, the word "thirty-one shall be substituted

(b) for the words "the principal officer" the words "a principal officer' shall be substituted

Amendment of section 31

12 In section **31** of the said Act,—

(a) after the word and figure "section 7" the words and figure "or section 98' shall be inserted,

(b) after the words 'be kept otherwise than the words 'in the name of a public officer approved by the Central Government, or' shall be inserted

Amendment of section 35

13 In sub section (4) of section **35** of the said Act for the words and figures "and for the payment of the first instalment of the deposit under sections 3 and 7" the words and figures 'under section 3 and for the payment of the instalments of the deposit under section 7 or section 98" shall be substituted

Amendment of section 38

14 In section **38** of the said Act,—

(a) in sub section (2),—

(i) after the words 'instrument duly attested but' the words 'except where the transfer or assignment is in favour of the insurer" shall be inserted;

(ii) after the words 'notice in writing of the transfer or assignment" the words together with either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents" shall be inserted,

(iii) the words 'at his principal place of business in British India by or on behalf of the transferor or transferee" shall be omitted,

(iv) at the end the following proviso shall be added —

"Provided that where the insurer maintains one or more places of business in British India, such notice shall be delivered only at the place in British India mentioned in the policy for the purpose or at his principal place of business in British India ",

(b) in sub-section (5), for the words, figure and brackets 'From the date of the receipt of the notice referred to in sub-section (2), the insurer shall" the words figure and brackets 'Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (2)," shall be substituted,

(c) for sub-section (6) the following sub-section shall be substituted, namely —

'(6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section",

(d) in sub-section (7), for the words "life of the policy-holder' the words "lifetime of the person whose life is insured shall be substituted

Amendment of section 39

15 In section **39** of the said Act,—

(a) in sub-section (1), after the words "The holder of a policy of life insurance" the words "on his own life, not being an absolute assignee of the benefits under the policy," shall be inserted;

(b) to sub section (2) the following shall be added, namely —

"but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer",

(c) for sub-section (3) the following sub section shall be substituted, namely —

"(3) The insurer shall furnish to the policyholder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change ',

(d) in sub-section (5), for the words '*lifetime of the policy holder*" the words 'lifetime of the person whose life is insured shall be substituted;

(e) in sub-section (6), for the word 'policyholder" the words 'person whose life is insured' shall be substituted

Amendment of section 40

16 In section **40** of the said Act,—

(a) in sub section (1), the word "licensed', in both places where it occurs, and the words and figure "under section 42' shall be omitted,

(b) in sub section (2), the words and figure 'licensed under section 42" shall be omitted,

(c) in sub section (3), for the words "an insurance agent" the words "any person whether an insurance agent within the meaning of this Act or not,' shall be substituted

17

Amendment of section 47

18 In section 47 of the said Act, —

(a) in sub-section (1), after the words "from the date of the maturing of the policy" the words "or, where the circumstances are such that the insurer cannot be immediately aware of such maturing, from the date on which notice of such maturing is given to the insurer," shall be inserted ,

(b) in sub-section (4), for the words 'from the death of the insured, or the maturing of the policy by survival' the words "from the maturing of the policy by survival, or from the date of receipt of notice by the insurer of the death of the insured, as the case may be,' shall be substituted

Amendment of section 48

19 In section 48 of the said Act, —

(a) in sub-section (1), after the words and figure "incorporated under the Indian Companies Act, 1931,' the words and figures "or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,' shall be inserted ,

(b) for sub-section (2) the following sub-section shall be substituted, namely —

'(2) This section shall not take effect, in respect of any company in existence at the commencement of this Act, until the expiry of one year therefrom, and in respect of any company incorporated after the commencement of this Act, until the expiry of two years from the date of registration to carry on life insurance business"

Amendment of section 50

20 In section 50 of the said Act, for the words 'within three months of the lapsing of a policy of life insurance," the words "before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid," shall be substituted

Amendment of section 53

21 In sub-section (i) of clause (b) of sub-section (2) of section 53 of the said Act, after the word and figure 'section 7' the words and figure "or section 98' shall be inserted

Amendment of section 59

22 In section 59 of the said Act, for the words and figure 'deposit made by the company under section 7 the words and figures "deposit made by the company or the insurer, as the case may be, under section 7 or section 98" shall be substituted

Amendment of section 63

23 In section 63 of the said Act, for the word "agent the word representative" shall be substituted

Amendment of section 65

24 In section 65 of the said Act, for the word "incorporate the word "unincorporate' shall be substituted

Amendment of section 73

25 In sub-section (1) of section 73 of the said Act,—

(a) for the words "make each year' the words "make in each calendar year shall be substituted ,

(*b*) for the words "income for the year" the words "income for the preceding calendar year" shall be substituted

Amendment of section 80

26 In sub-section (3) of section **80** of the said Act, after the words "this section" the words and figure "and section 73" shall be inserted

Amendment of section 82

27 In sub-section (3) of section **82** of the said Act, after the words and figure "incorporated under the Indian Companies Act 1913," the words and figures "or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby," shall be inserted.

Amendment of section 85

28 To sub-section (2) of section **85** of the said Act the words "or in the name of a public officer approved by the Central Government" shall be added

Amendment of section 95.

29. In clause (*a*) of sub-section (1) of section **95** of the said Act, for the words and figure "incorporated under the provisions of the Indian Companies Act, 1913," the words and figures "incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby," shall be substituted

Amendment of section 98

30 In sub section (2) of section **98** of the said Act, for the word "year," in both places where it occurs, the words "calendar year" shall be substituted

Amendment of section 103

31 In sub-section (1) of section **103** of the said Act, for the words "in relation to any such class of insurance business" the words "in relation to any insurance business transacted in contravention of any of the said sections" shall be substituted

Amendment of section 114

32 In clause (*l*) of sub-section (2) of section **114** of the said Act, after the figure and brackets "(5)," the figure and brackets "(6)," shall be inserted

Amendment of section 116

33 In section **116** of the said Act, for the word and figure "section 6," the words and figures "section 7 or section 98" shall be substituted

Repeal of section 122 of Act IV of 1938 and saving of article 86 in First Schedule to Act IX of 1908

34 Section **122** of the said Act is hereby repealed, and article 86 in the First Schedule to the Indian Limitation Act, 1908, shall have effect as if the said section had never been enacted

Amendment of First Schedule to Act IV of 1938.

35 *In Part II of the First Schedule to the said Act, in the heading* to Form AA, for the words "Indian Assets" the words "Assets in India" shall be substituted

Amendment of Third Schedule

36 In Part II of **the Third Schedule** to the said Act,—

(*a*) in form D,—

(*i*) for the entry in the first column "Commission (less that on Re-insurances)" the entry "Commission to insurance agents (less that on Re-insurances)" shall be substituted ,

(ii) for the entry in the first column "1 Commission and allowances" the entry "1 Allowances and Commission other than Commission to insurance agents)" shall be substituted,

(iii) in note (e) the word "British" shall be omitted,

(b) in the fourth column of Form DD, after the word "immediate" the words "or deferred" shall be inserted;

(c) to Form DDD the following notes shall be added, namely —

"A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted

Insurers having their principal place of business in British India shall give the information required in the form separately for business transacted in India and business transacted outside India and insurers having their principal place of business outside British India will furnish information regarding business transacted in India only.",

(d) in Form DDDD,—

(i) the word "financial," in the three places where it occurs, shall be omitted,

(ii) for the word "revised" the word "revived" shall be substituted,

(e) in note (c), note (d) and the note denoted by an asterisk in Form E, the word "British," wherever it occurs, shall be omitted,

(f) in note (d), note (e) and the note denoted by an asterisk in Form F, the word British', wherever it occurs shall be omitted

Amendment of Fourth Schedule

37 In Part I of the **Fourth Schedule** to the said Act,—

(a) in regulation 2 for the word and figure "paragraph 3 the word and figure "paragraph 4 shall be substituted,

(b) in regulation 3, for the word and figure 'paragraph 4", in the three places where they occur, the word and figure "paragraph 5" shall be substituted,

(c) in the proviso to regulation 4,—

(i) for the words "an insurance company" the words "an insurer' shall be substituted,

(ii) for the words 'the company", in both places where they occur, the words "the insurer" shall be substituted

THE INDIAN INCOME-TAX (AMENDMENT) ACT, 1939.

(ACT NO VII OF 1939)

An Act further to amend the Indian Income tax Act, 1922

(Received the assent of the Governor-General on the 17th February, 1939.)

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922,* for the purposes hereinafter appearing, It is hereby enacted as follows —

Short title and commencement

1 (1) This Act may be called the Indian Income-tax (Amendment) Act, 1939.

(2) This section and Part I shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint, and Part II shall come into force on such subsequent date, not later than two years from the date appointed for the coming into force of Part I, as the Central Government may, in like manner, appoint ·

Provided that sub-clauses (*iii*) and (*iv*) of clause (*b*) of section 11 shall not take effect earlier than the 1st day of April, 1940

PART I

Amendment of section 2, Act XI of 1922

2 In section 2 of the Indian Income-tax Act, 1922* (hereinafter referred to as the said Act),—

(*a*) in clause (3), before the word 'Assistant", in both places where it occurs, the word "Appellate" shall be inserted

(*b*) after clause (6) the following clause shall be inserted, namely —

'(6A) 'dividend' includes—

(*a*) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ,

(*b*) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits whether capitalised or not ,

(*c*) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included , and

(*d*) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not

Provided that 'dividend does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub clause (*c*) or (*d*).

Explanation—The words 'accumulated profits, wherever they occur in this clause, shall not include 'capital profits' " ,

(*c*) existing clause (6A) shall be re-numbered as clause (6B) and, in that clause, as so re-numbered for the words and figures "the Indian Contract Act, 1872 ," the words and figures "the Indian

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* XI of 1922.

Partnership Act, 1932 " shall be substituted, and the following words shall be added, namely —

"provided that the expression 'partner includes any person who being a minor has been admitted to the benefits of partnership , " ,

(*d*) after clause (6B), as so re-numbered, the following clauses shall be inserted, namely —

"(6C) 'income' includes anything included in 'dividend' as defined in clause (6A) and anything which under *Explanation 2* to sub-section (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (*vii*) of sub-section (2) of section 10 and the profits of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in the Schedule ,

(6D) 'Inspecting Assistant Commissioner' means a person appointed to be an Inspecting Assistant Commissioner of Income tax under section 5 , " ,

Notes —' In Section 2 clauses (*3*), (*6D*) Appellate Assistant Commissioners and Inspecting Assistant Commissioners are defined as the result of amendment to s 5 — *Notes on Clauses*

(*e*) in clause (9), after the word "family' , the words ' and a local authority" shall be inserted ,

(*f*) in clause (11),—

(*i*) after the word ' means the following words shall be inserted, namely —

' in respect of any separate source of income profits and gains ,

(*ii*) for the proviso to sub clause (*a*) the following proviso shall be substituted, namely —

"Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit , or ' ,

(*iii*) after sub-clause (*b*) the following shall be added, namely —

"or

(*c*) where a business, profession or vocation has been newly set up in the financial year preceding the year for which the assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub clause (*b*) or if the accounts of the assessee are made up to some other datethan the 31st day of March and the case is not one for which a period has been determined by the Central Board of Revenue under sub-clause (*b*), then, at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it shall be deemed that there is no previous year , and

when the assessee is a partner in a firm, 'previous year' in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm , ' , and

Notes —' The definition of 'previous year' is amended so as to—

(1) allow an assessee to have separate previous years for each separate source of income

(2) to prevent double assessment of the same profits when the assessee exercises the option to change his 'previous year' for the first time after his first year of assessment,

(3) to prevent double assessment of the same profits in the case of a newly set up business,

(4) to prescribe the 'previous year' of the firm as the partner's 'previous year' in respect of his share ' —*Notes on Clauses*

(*g*) in clause (15), for the words "from all sources to which this Act applies" the words, brackets and figures "referred to in sub-section (1) of section 4" shall be substituted, for the word and figures "section 16' the words "this Act" shall be substituted, and the following words shall be added, namely —

"'total world income' includes all income, profits and gains wherever accruing or arising except income to which, under the provisions of sub-section (3) of section 4, this Act does not apply, and "

Notes —' The definition of 'total income' is amended and the clause as amended includes a definition of total world income which is necessary for the purpose of assessing non residents —*Notes on Clauses*

Amendment of section 3 Act XI of 1922

3 In section 3 of the said Act, the words "applicable to the total income of an assessee' shall be omitted, for the words 'all income, profits and gains' the words "the total income' shall be substituted, and for the words 'company, firm and other association of individuals" the words "company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually" shall be

Amendment of section 4 Act XI of 1922

4 In section 4 of the said Act,—

(*a*) for sub sections (1) and (2) the following sub sections shall be substituted, namely —

'(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which—

(*a*) are received or are deemed to be received in British India in such year by or on behalf of such person or

(*b*) if such person is resident in British India during such year,—

(*i*) accrue or arise or are deemed to accrue or arise to him in British India during such year, or

(*ii*) accrue or arise to him without British India during such year, or

(*iii*) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year, or

(*c*) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year

Provided that there shall not be included in any assessment for the year ending on the 31st day of March, 1940, both the amount of

the income profits and gains referred to in sub clause (*ii*) of clause (*b*) and the amount of the income profits and gains referred to in sub-clause (*iii*) of clause (*b*) but only the greater of these two amounts

Notes —' The first proviso newly inserted in cl (*c*) of proposed sub section (1) of s 4 of the Act is aimed at removing the possibility now that in the case of residents the remittance basis of taxation is abandoned for the accrual basis of both foreign profits *which accrued in the previous year and foreign profits which were remitted in the* previous year being assessed in the first year after the change —*Report of the Select Committee*

Provided further that, in the case of a person not ordinarily resident in British India, income, profits and gains which accrue or arise to him without British India shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in Bri[illegible]

ccru-

ing or [illegible] into

British India in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees

Explanation 1—Income, profits and gains accruing or arising without British India shall not be deemed to be received in or brought into British India within the meaning of this sub section by reason only of the fact that they are taken into account in a balance-sheet prepared in British India

Explanation 2—Income which would be chargeable under the head Salaries' if payable in British India and not being pension payable without India shall be deemed to accrue or arise in British India wherever paid if it is earned in British India

Notes — The Privy Council (in Shaw Wallace case—6 I T C 178) has ruled that capital sums received in commutation of pension or as consolidated compensation for death or injuries or in payment of an insurance policy or as the accumulated balance from a Government Provident Fund could not in any scheme of taxation be regarded as income Specific exemption therefore is superfluous and the provision is deleted —*Notes on Clauses*

Explanation 3—A dividend paid without British India shall be deemed to be income accruing and arising in British India to the extent to which it has been paid out of profits subjected to income-tax in British India

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House

We have received an assurance that administrative arrangements can and will be made to obviate any hardship that might be imposed in consequence of the change to the accrual basis of taxation on persons prevented by laws in force in the country where their money may be lying from remitting money to British India as and when they wish —*Report of the Select Committee*

(2) For the purposes of sub section (1) where a husband is not resident in British India, remittances received by his wife resident in British India out of any part of his income which is not included in his total income shall be deemed to be income accruing in British India to the wife.

Notes —At present under the provisions of s 4 the Act applies to income which

accrues or arises or is received or is deemed to accrue or arise or be received in British Ind a and in addition in case of a resident to income accruing or ari ing outs de
ges the scope of

British India

n of a person
h India or not
The other foreign income of such a person rema ns l able only if brought into Br tish India

These amendments follow the provisions of the United Kingdom law except in respect of the foreign income of domicilec
securities stocks shares or rents
remittance basis wl ereas the Bill I
United Kingdom provisions in regr
pract ce they have given rise to difficulties An important omi sion from the amended sub section (1) is the proviso exempting income from agriculture in an Indian State —*Notes on Clauses*

(*b*) in sub section (3), —

(*i*) for the words 'This Act shall not apply to the following classes of income' the words 'Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them shall be substituted

(*ii*) after clause (*i*) the following clause shall be inserted, namely —

"(*ia*) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

(*a*) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(*b*) the work in connection with the business is mainly carried on by beneficiaries of the institution

beneficiar es —*Notes on Clauses*

(*iii*) to clause (*iii*) the following words shall be added namely —

'except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area ;

(*iv*) in clause (*iv*), for the figures "1897 the figures '1925' shall be substituted

(*v*) clause (*v*) shall be omitted ,

(*vi*) to the last paragraph the following words shall be added, namely —

", but nothing contained in clause (*i*) clause (*ia*) or clause (*ii*) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public

sub section (3) is designed to prevent
rel gious trusts It pr scribes tl at the
e rel gious trust which does not enure

Insertion of new sections 4A and 4B in Act XI of 19 2

5 After section 4 of the said Act and in Chapter I the following sections shall be inserted namely ;—

Residence in British India

"4A For the purposes of this Act—

(*a*) any individual is resident in British India in any year if he—

(*i*) is in British India in that year for a period amounting in all to one hundred and eighty-two days or more, or

(*ii*) maintains or has maintained for him a dwelling place in British India for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in British India for any time in that year; or

(*iii*) having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty five days or more, is in British India for any time in that year otherwise than on an occasional or casual visit,

a) proposed section 4A of the Act Report 1936 which is based on the report of the United Kingdom nt in April 1936 The change in —*Report of the Select Committee*

(*b*) a Hindu undivided family, firm or other association of persons is resident in British India unless the control and management of its affairs is situated wholly without British India, and

(*c*) a company is resident in British India in any year (*a*) if the control and management of its affairs is situated wholly in British India in that year, or (*b*) if its income arising in British India in that year exceeds its income arising without British India in that year

Notes — Owing to the enlargement of the scope of section 4 of the Act by clause (4) of the Bill residence and domicile have to be defined for certain cases and they are defined here —*Notes on Clauses*

Ordinary residence

4B For the purposes of this Act—

(*a*) an individual is 'not ordinarily resident' in British India in any year if he has not been resident in British India in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in British India for a period of, or for periods amounting in all to more than two years,

(*b*) a Hindu undivided family is deemed to be ordinarily resident in British India if its manager is ordinarily resident in British India;

(*c*) a company, *firm or other association of persons is ordinarily* resident in British India if it is resident in British India'

Substitution of new section for section 5, Act XI of 1922

6 For section 5 of the said Act the following section shall be substituted, namely —

Income tax authorities

"5 (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely —

(*a*) the Central Board of Revenue,

(*b*) Commissioners of Income tax,

(*c*) Assistant Commissioners of Income-tax who may be either *Appellate Assistant Commissioners of Income tax or Inspecting* Assistant Commissioners of Income-tax,

(*d*) Incom-tax Officers

(2) The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment, and may appoint Commissioners of Income-tax, not more than three in

all, each to discharge, without reference to area, and to the exclusion of any Commissioner appointed for any area, the functions of a Commissioner in respect of any cases or classes of cases assigned to him by the Central Board of Revenue

(3) The Central Government may appoint for any area as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit

(4) Appellate Assistant Commissioners of Income-tax shall be under the direct control of the Central Board of Revenue and shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Central Board of Revenue may direct, and, where two or more Appellate Assistant Commissioners have been appointed for the same area in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed

(5) Inspecting Assistant Commissioners of Income tax and Income tax Officers shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income tax may direct, and where two or more Inspecting Assistant Commissioners of Income tax or Income tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income tax may make for the distribution and allocation of the work to be performed The Commissioner may, with the previous approval of the Central Board of Revenue, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases be exercised by the Inspecting Assistant Commissioner and the Commissioner, respectively and for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner respectively

(6) The Central Board of Revenue may, by notification in the official Gazette empower Commissioners of Income-tax Appellate or Inspecting Assistant Commissioners of Income tax and Income tax Officers to perform such functions in respect of such classes of persons or such classes of income and for such area as may be specified in the notification and thereupon the functions so specified shall cease within the specified area to be performed in respect of the specified classes of persons or classes of income by the other authorities appointed under sub sections (2) and (3)

(7) Assistant Commissioners of Income tax and Income tax Officers shall, for the purposes of this Act be subordinate to the Commissioner of Income-tax for the area in which they perform their functions, or where they perform functions assigned to them by a Commissioner of Income tax appointed without reference to area, to that Commissioner

(8) All officers and persons employed in the execution of this Act shall observe and follow the orders instructions and directions of the Central Board of Revenue

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions'

Amendment of section 6, Act XI of 1922

7 In section 6 of the said Act, for clauses (iii), (iv), (v) and (vi) the following clauses shall de substituted, namely —

"(iii) Income from property.

(iv) Profits and gains of business, profession or vocation

(v) Income from other sources'

Amendment of section 7, Act XI of 1922

8 In sub-section (1) of section 7 of the said Act,—

(a) the words "received by him" shall be omitted,

(b) for the words "which are paid by or on behalf of the Crown" the words "which are due to him from, whether paid or not, or are paid by or on behalf of, the Crown' shall be substituted,

(c) for the words 'by or on behalf of any private employer" the following words shall be substituted, namely —

"any private employer, and for the purposes of this sub-section advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received'

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties' ',

(d) in the existing proviso after the word "Provided' the word "further shall be inserted,

(e) after the proviso the following further proviso shall be inserted, namely:—

"Provided further that where tax is deductible at the source under section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction";

and

(f) the existing *Explanation* shall be numbered *Explanation 1*, and after that *Explanation*, the following *Explanation* shall be added, namely —

'*Explanation 2*—A payment due to or received by an assessee from an employer or former employer or from a provident or other fund at or in connection with the termination of his employment, whether or not the employment is then terminated or to be terminated, is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a proft received in lieu of salary for the purposes of this sub section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services

Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act, 1925 applies, or any payment from a recognised provident fund within the meaning of Chapter IXA if such payment is exempted from payment of income-tax under the provisions of Chapter IXA, or any payment from an approved superannuation fund within the meaning of Chapter IXB made on the death of a beneficiary or in lieu of

or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established

Amendment of section 8 Act XI of 1922

9 In section 8 of the said Act, to the first proviso the following shall be added, namely —

"or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, unless in respect of interest which is so chargeable tax has been paid or deducted under section 18, or unless there is a person in British India who may be appointed an agent under section 43 in respect of such interest

Amendment of section 9, Act XI of 1922

10 In section 9 of the said Act,—

(a) in sub section (1),—

(i) for the words "under the head Property' " the words "under the head Income from Property ' shall be substituted, and for the words his business' the words "any business, profession or vocation carried on by him the profits of which are assessable to tax' shall be substitutrd ,

(ii) for clause (iv) the following clause shall be substituted, namely —

"(iv) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge where the property is subject to an annual charge not being a capital charge the amount of such charge , where the property is subject to a ground rent, the amount of such ground rent , and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital

Provided [illegible] or annual charg[illegible] this Act, not be[illegible] before the 1st day of April, 1938 except interest or a charge on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent for the payee in British India who may be assessed under section 43 ,' ,

(iii) for clause (vii) the following clause shall be substituted, namely —

'(vii) in respect of vacancies, that part of the net annual value, after deducting the foregoing allowances which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the net annual value, after deducting the foregoing allowances appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied '

(iv) the proviso shall be omitted ,

(b) after sub section (2) the following sub-section shall be added, namely —

"(3) Where property is owned by two or more persons and their

respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income' .

Amendment of section 10, Act XI of 1922

11 In section 10 of the said Act,—

(*a*) In sub-section (1), for the word 'Business', where it first occurs, the words "Profits and gains of business profession or vocation" shall be substituted, and for the word "business", in all other places where it occurs throughout the section, the words 'business, profession or vocation" shall be substituted ,

(*b*) in sub section (2),—

(*i*) in clause (*i*), for the words "proportional part" the words 'proportional annual value of the part" shall be substituted ,

(*ii*) in clause (*iii*), the words "where the payment of interest thereon is not in any way dependent on the earning of profits" shall be omitted , and to the clause the following proviso shall be added, namely —

'Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable

n a loan issued for public sub-

except interest on which tax

deducted under section 18 or

in respect of which there is an agent in British India who may be assessed under section 43 or, in the case of a firm, for any interest paid to a partner of the firm ," ,

(*iii*) in clause (*vi*),—

(*a*) for the words "original cost thereof to the assessee" the words "written down value thereof" shall be substituted ,

(*b*) in clause (*b*) of the proviso, after the words "in any year" the words and figures "not being a year which ended prior to the 1st day of April, 1939," shall be inserted ,

(*iv*) for clause (*vii*) the following clause shall be substituted, namely —

"(*vii*) in respect of any machinery or plant which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value

Provided that such amount is actually written off in the books of the assessee

Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place ," ,

(*v*) clauses (*viia*), (*viii*) and (*viiia*) shall be re numbered, respectively, clause (*viii*), clause (*ix*) and clause (*x*), and in clause (*c*) of the

, for the word "businesses"

ons" shall be substituted ,

by this Act, the following

clause shall be inserted, namely —

'(*xi*) when the assessee's accounts in respect of any part of his

business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the Income tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered and if less, the deficiency shall be deemd to be a business expense of that year, ',

(*vii*) existing clause (*iv*) shall be re numbered (*xii*) and in that clause, for the brackets and words "(not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains" the brackets and words '(not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation' shall be substituted and the proviso at the end of that clause shall be omitted,

(*c*) for sub-section (3) the following sub-sections shall be substituted, namely —

'(3) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (*iv*), clause (*v*), clause (*vi*) or clause (*vii*) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building machinery, plant or furniture was wholly so used

(4) Nothing in clause (*ix*) or clause (*xii*) of sub section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains, and nothing in clause (*xii*) of sub-section (2) shall be deemed to authorise—

(*a*) any allowance in respect of a payment which is chargeable under the head 'Salaries if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18, or

(*b*) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm, or

(*c*) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head 'Salaries'

(5) In sub-section (2), 'paid' means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section, 'plant' includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation, and 'written down value' means—

(a) in the case of assets acquired in the previous year, the actual cost to the assessee

(b) in the case of assets acquired before the previous year but after the commencement of the Indian Income tax (Amendment) Act 1939 the actual cost to the assessee less all depreciation allowable to him under this section,

(c) in the case of assets acquired before the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the 1st day of April 1922, and at the rates in force on the 1st day of April, 1922, for each such year prior to that date

Provided that where the provisions of the proviso to sub-section (2) of section 26 are applicable, the actual cost to the assessee referred to in clauses (a), (b) and (c) shall be the actual cost to the person succeeded in the business, profession or vocation

Provided further that there shall not be so deducted from the actual cost any depreciation allowance or part of any depreciation allowance which was due for a year which ended prior to the 1st *day of April, 1939* but to which *full effect* was not given owing to the absence of profits or gains chargeable for that year, or owing to the profits or gains so chargeable being less than the allowance

(6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services and the profits and gains therefrom shall be liable to tax accordingly

(7) Notwithstanding anything to the contrary contained in section 8 9, 10 12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act'

Omission of section 11 Act XI of 1922

12 Section 11 of the said Act shall be omitted

Amendment of section 12 Act XI of 1922

13 In section 12 of the said Act —

(a) in sub section (1) for the words 'Other sources' the words 'Income from other sources' shall be substituted and for the words "and from every source to which this Act applies the words 'which may be included in his total income shall be substituted,

(b) in sub-section (2), for the words "provided that no allowance shall be made on account of any personal expenses of the assessee the *following shall be substituted, namely* —

Provided that no allowance shall be made on account of—

(a) any personal expenses of the assessee, or

(b) any interest chargeable under this Act which is payable without British India, *not being interest on a loan issued for public* subscription before the 1st day of April, 1938, or not being interest on which tax has been paid or from which tax has been deducted under section 18 or

(c) any payment which is chargeable under the head Salaries' if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18",

(c) after sub-section (2) the following sub-section shall be added, namely :—

"(3) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 10."

Insertion of new section 12A in Act XI of 1922

14 After section 12 of the said Act the following section shall be inserted, namely —

Managing Agency Commission

"12A Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement '

Amendment of section 13, Act XI of 1922

15. In section 13 of the said Act, the figures "II' shall be omitted

Amendment of section 14, Act XI of 1922

16 For sub section (2) of section 14 of the said Act the following sub section shall be substituted, namely —

"(2) The tax shall not be payable by an assessee—

(a) if a partner of an uregistered firm, in respect of any portion of his share in the profits and gains of the firm computed in the manner laid down in clause (b) of sub-section (1) of section 16 on which the tax has already been paid by the firm , or

(b) if a member of an association of persons other than a Hindu undivided family, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association '

Amendment of section 15, Act XI of 1922

17 In section 15 of the said Act,—

(a) in sub-section (1), for the figures "1897' the figures "1925' shall be substituted, and for the words "by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife' the words 'in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee' shall be substituted ,

(b) in sub-section (3), for the word "proviso' the words "second proviso shall be substituted and for the words 'one-sixth of the total income of the assessee" the following words shall be substituted, namely —

"in the case of an individual, one-sixth of the total income of the '

assessee, or six thousand rupees whichever is less and in the case of a Hindu undivided family, one-sixth of the total income of the assessee, or twelve thousand rupees whichever is less'.

Amendment of section 16, Act XI of 1922

18 In section 16 of the said Act,—

(a) for sub-sections (1) and (2) the following sub sections shall be substituted, namely —

"(1) In computing the total income of an assessee—

(a) any sums exempted under the second proviso to sub-section (1) of section 7, the second and third provisoes to section 8, sub-section (2) of section 14 and section 15 shall be included,

(b) when the assessee is a partner of a firm, then, whether the firm has made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of section 24,

(c) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act, 1939 from assets remaining the property of the settlor or disponer shall be deemed to be income of the settlor or disponer, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the settlor, disponer or transferor, or in any way gives the settlor, disponer or transferor a right to reassume power directly or indirectly over the income or assets

Provided further that the expression 'settlement or disposition' shall for the purposes of this clause include any disposition, trust covenant, agreement, or arrangement and the expression 'settlor or disponer' in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made

Provided further that [illegible] income arising to any person by virtu[illegible] not revocable for a period exc[illegible] of the person and from which [illegible] no direct or indirect benefit b[illegible] assessed on the said income as and when the power to revoke arises to him

(2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid credited or distributed to him, and shall be increased by the amount of income-tax (but not super tax) payable thereon calculated at the

rate applicable to the total income of a company for the financial year in which the dividend is paid credited or distributed or deemed to have been paid credited or distributed

Provided that when any portion of the profits and gains of the company out of which such dividend has been paid credited or distributed or deemed to have been paid credited or distributed was not liable to income tax in the hands of the company the income tax to be added under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income tax bears to the total profits and gains of the company

(*b*) in sub clause (*iv*) of clause (*a*) of sub section (3) after the words by such individual" the words otherwise than for adequate consideration' shall be inserted

(*c*) in clause (*b*) of sub section (3), for the words 'association of individuals the words person or association of persons shall be substituted the words consisting of such individual and his wife shall be omitted for the words to the association" the words otherwise than for adequate consideration to the person or association shall be substituted and to the clause the words for the benefit of his wife or a minor child or both shall be added

Substitution of new section for section 17 Act XI of 1922

19 For section 17 of the said Act the following section shall be substituted namely —

Determination of tax payable in certain special cases

17 (1) Where a person is not resident in British India and is a British subject as defined in section 17 of the British Nationality and Status of Aliens Act 1914 or a subject of a State in India or Burma, the tax including super tax payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income and in the case of any other non resident person the income tax payable by him or on his behalf on his total income shall be at the maximum rate and the super tax payable thereon shall be an amount bearing to the total amount of super tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income

(2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm if assessed as such) exempted from tax by or under the provisions of this Act the income tax excluding super tax payable by the assessee shall be an amount bearing to the total amount of the income tax excluding super tax which would have been payable on the total income had no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income

Amendment of section 18 Act XI of 1922

20 In section 18 of of the said Act —

(*a*) in sub section (2) for the words "but not super tax the words and super tax shall be substituted and for the words at the rate applicable to the estimated income of the assessee under the head the words at a rate representing the average of the

applicable to the estimated total income of the assessee under this head' shall be substituted ,

(b) after sub-section (2A) the following sub section shall be inserted, namely —

"(2B) Any person responsible for paying any income chargeable under the head 'Salaries' to a person not resident in British India shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head ' ,

(c) in the proviso to sub section (3), after the words "the total income' the words "or the total world income' shall be inserted and for the words "herein referred to' the words brackets, figure and letter "referred to in this sub section or in sub section (2B), as the case may be,' shall be substituted ,

(d) after sub-section (3) the following sub-section shall be inserted, namely :—

' (3A) Any person responsible for paying to a person not resident in British India any interest not being 'Interest on Securities', or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate

(e) existing sub sections (3A), (3B), (3C) and (3D) shall be re-numbered, respectively, (3B), (3C), (3D) and (3E) ,

(f) in sub-section (3B), as re numbered by this Act, for the words "total income', in both places where they occur, the words "total world income" shall be substituted , after the words ' Interest on Securities" the words "or any other sum chargeable under this Act" shall be inserted , for the words "paying such interest' the words 'making such payments" shall be substituted , and the words "income-tax and shall be omitted ,

(g) in sub-section (3C) as re numbered by this Act, after the words "Interest on Securities' the words "or any other sum chargeable under this Act" shall be inserted , for the words 'pays to that person in any year an amount of such interest' the words "makes to that person in any year payments" shall be substituted , for the words "paying such interest' the words "making such payments' shall be substituted , for the word brackets, figure and letter "sub section (3A)" the word, brackets, figure and letter ' sub section (3B) shall be substituted , the words "income tax on the total amount of such interest at the rate appropriate to such total, and shall be omitted , and for the words "such total" the words "the total amount of such p[illegible]

[illegible] umbered by this Act, for the words
" [illegible] ld income" shall be substituted ,
[illegible] e-numbered by this Act, for the
w [illegible] ib section (3C)" the word brackets,
fi [illegible] shall be substituted ,

(j) in sub-section (5), after the word "section' the words, brackets and figures " and any sum by which a dividend has been increased under sub section (2) of section 16" shall be inserted after the word 'security" the words "or of the shareholder" shall be inserted, and in the second proviso to the said sub-section,—

(i) for the words, figures and brackets "sub-section (3) of section

16" the words, letters, figures and brackets "clause (*c*) of sub section (1) or sub section (3) of section 16, section 44D or section 44E" shall be substituted, and

(*ii*) for the words "that person" the words "such other person" shall be substituted;

(*k*) in sub-section (7), for the words "and pay" the words "or after deducting fails to pay" shall be substituted, and for the word "he", where it first occurs, the words, brackets, figures and letters "he, and in the cases specified in sub sections (3D) and (3E) the company of which he is the principal officer" shall be substituted, and for the word "he", where it occurs for the second time, the words "he or it" shall be substituted;

(*l*) in sub section (9), for the words "at the time of payment of interest or dividends" the words "at the time of payment of the sum from which tax has been deducted" shall be substituted, and for the word, brackets, figure and letters "or (3D)" the word, brackets, figures and letters "(3D) or (3E)" shall be substituted.

Substitution of new section for section 19, Act XI of 1922

21 For section 19 of the said Act the following section shall be substituted, namely —

Payment in other cases

"19 In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, income tax shall be payable by the assessee direct"

Amendment of section 20A, Act XI of 1922

22 In section 20A of the said Act, for the words "one thousand" the words "four hundred" shall be substituted

Amendment of section 21, Act XI of 1922

23 In section 21 of the said Act,

(*a*) after the words "in the prescribed form" the words "and verified in the prescribed manner" shall be inserted,

(*b*) in clause (*a*), after the word "received" the words "or to whom was due" shall be inserted,

(*c*) in clause (*b*), after the word "received" the words "or so due" shall be inserted, and after the word "paid" the words "or due, as the case may be" shall be added,

(*d*) in clause (*c*), after the word "income-tax" the words "and super-tax" shall be inserted

Amendment of section 22, Act XI of 1922

24 In section 22 of the said Act,—

(*a*) for sub-section (1) the following sub-section shall be substituted, namely,—

"(1) The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a

return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year.

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons",

(*b*) in sub-section (2), the words "other than a company" shall be omitted, and for the words "shall serve' the words "may serve" shall be substituted, and after the words "his total income" the words "and total world income" shall be inserted, and to the said sub-section the following proviso shall be added, namely —

"*Provided that the Income-tax Officer may in his discretion extend* the date for the delivery of the return',

(*c*) in sub-section (3), the words "and any return so made shall be deemed to be return made in due time under this section" shall be omitted,

(*d*) in sub section (4), the words "on the principal officer of any company or" shall be omitted, and after the words "on any person" the words "who has made a return under sub-section (1) or' shall be inserted, and

(*e*) after sub-section (4) the following sub-section shall be added, *namely*.—

"(5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof"

Amendment of section 23, Act XI of 1922

25 In section 23 of the said Act,—

(*a*) in sub-section (1), after the word "satisfied' the words "without requiring the presence of the assessee or the production by him of any evidence" shall be inserted;

(*b*) in sub-section (2), for the words and figure "has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve on the person who made the return" the words and figure "is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person" shall be substituted,

(*c*) in sub section (4),—

(*i*) for the words beginning "If the principal officer" and ending 'as the case may be' the words, brackets and figures "If any person fails to make the return required by any notice given under sub-section (2) of section 22 and has not made a return or a revised return under sub-section (3) of the same section" shall be substituted;

(*ii*) after the word "judgment" the words "and determine the sum payable by the assessee on the basis of such assessment "shall be inserted;

(iii) for the words "in the case of a registered firm, may cancel its registration the words 'in the case of a firm, may refuse to register it or may cancel its registration if it is already registered' shall be substituted ,

(d) after sub-section (4) the following sub section shall be added, namely —

'(5) Notwithstanding anything contained in the foregoing sub-sections when the assessee is a firm and the total income of the firm has been assessed under sub-section (1) sub section (3) or sub-section (4) as the case may be,—

(a) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined

Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 24

Provided further that when any of such partner is a person not resident in British India his share of the income profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally and the sum so determined as payable shall be paid by the firm , and

(b) in the case of an unregistered firm, the Income tax Officer may instead of determining the sum payable by the firm itself proceed in the manner laid down in clause (a) as applicable to a registered firm if, in his opinion, the aggregate amount of the tax including super tax, if any payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm

Notes —' Sub section (5) which is a new sub section provides that in the case of a registered firm the partners and not the firm are to be assessed and the partners of an unregistered firm may be assessed in the same way if they are avoiding tax by non registration A partner s share is to be his share of the previous year s profit and he may carry forward his share of loss The firm is to be assessed on a non resident partner s share —*Notes on Clauses*

Amendment of section 23A Act XI of 1922

26 In section 23A of the said Act,—

(a) sub-section (1) shall be omitted

(b) sub section (2) shall be re numbered sub-section (1) and—

(i) for the portion of the said sub section preceding the proviso the following shall be substituted namely —

Power to assess individual members of certain companies

'(1) Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting increased by any income-tax payable thereon are less than sixty per cent of the assessable income of the company of that previous year he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made the payment of a dividend or a larger dividend than that declared would be unreasonable make with ...

previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income

Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply as if instead of the words 'sixty per cent. of the assessable income' the words 'one hundred per cent of the assessable income' were substituted

Provided further that no order under this sub section shall be made where the company has distributed not less than fifty five per cent of the assessable income of the company, unless the company on receipt of a notice from the Income tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made is not less than sixty per cent of the assessable income of the company of the previous year concerned ,

Notes — We have added an additional proviso in order to make allowance for possible cases of error in which though the full sixty per cent of the assessable income of the company has not been actually distributed an amount exceeding fifty five per cent has been distributed In such cases we consider that the company should be given a reasonable opportunity of escaping the operation of the section by raising the distribution within three months —*Report of the Select Committee*

(ii) for the proviso the following shall be substituted, namely —

"Provided further that this sub section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof ,

(ii) in the *Explanation*, the whole of clause (a) the brackets and letter "(b)' and the whole of clauses (c) and (d) shall be omitted

(c) sub-section (3) shall be re numbered as sub-section (2) and in the sub section, as so re-numbered, before the words "Assistant Commissioner the word "Inspecting' shall be inserted and the words firm association or' shall be omitted ,

(d) sub sections (4) and (5) shall be re-numbered, respectively. sub-sections (3) [illegible] s so re-numbered —

(i) par[illegible]

(ii) in [illegible] kets and figure "sub section (2), the word brackets and figure 'sub section (1) shall be substituted , for the words 'and may be recovered from such member the words 'if it cannot be recovered from such member shall be substituted and the words following those words shall be omitted ,

(iii) in paragraph (iii), the words , firm or other association' and the words ', firm or association' shall be omitted ,

(e) after sub-section (4), as re-numbered by the foregoing clause, the following sub-section shall be added, namely :—

"(5) When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company "

Notes —"Section 23A of the Income tax Act, 1922, has proved practically a dead letter, mainly because it imposes upon the Income tax Officer the duty of determining whether the profits and ... d to accumulate beyond its reasonable ... the maintenance and development of the ... ple arithmetical criterion for the deter ... o the circumstances of a company in any ... the procedure under the section "Instead ... m payable as income tax by the company shall not be determined and that the proportionate share of each member in the profits and gains of the company shall be included in his total income, the Income tax officer has under *the present clause merely to deem the profits of the company to have been* distributed as dividends on a given date."—*Notes on Clauses*

Amendment of section 24, Act XI of 1922.

27. In section 24 of the said Act,—

(a) to sub-section (1) the following proviso shall be added, namely —

"Provided that where the assessee is an unregistered firm which has *not been assessed under the provisions of clause (b) of sub-section (5)* of section 23 in the manner applicable to a registered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm , and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section." ;

(b) for sub-section (2) the following sub-sections shall be substituted, namely .—

"(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head 'Profits and gains of business, profession or vocation', and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year , and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on , but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, respectively, shall be carried forward only for one, two, three, four and five years, respectively .

Provided that nothing herein contained shall entitle any assessee, being a registered firm, to have carried forward and set off any loss which has been apportioned between the partners, under the

proviso to sub-section (1), or entitle any assessee, being a partner in an unregistered firm which has not been assessed under the provisions of clause (*b*) of sub-section (5) of section 23 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm ·

Provided further that where an unregistered firm is assessed as a registered firm under clause (*b*) of sub-section (5) of section 23, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm :

Provided further that where a change has occurred in the constitution of a firm or where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains

Notes —' Sub section (2) allows losses in a business profession or vocation to be carried forward and set off against the profits of the same business profession or vocation The period of carrying forward is to be six years but to mitigate the effect on the revenue of this concession losses of the first 'previous years' after the commencement of the *Amending Act are to be carried forward for one year, losses of the past year for two years,* and so on until the full period of six years is reached The provisions regarding registered

(3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section"

Notes —This sub section provides for the computation of the loss in an order in writing and its communication to the assessee —*Notes on Clauses.*

Amendment of section 24A, Act XI of 1922.

28 In section 24A of the said Act,—

(*a*) in sub-section (1), for the words beginning "for the period from the expiry of the last previous year' and ending 'for the financial year in which such assessment is made" the following words shall be substituted, namely —

"of the period from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of his departure from British India, or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from British India The assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made' , and in the proviso, for the words "or have been assessed at too low

a rate" the words "or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but" shall be substituted ,

(*b*) in sub-section (2), for the words "comprised in the period first referred to in" the words "comprised in the relevant period referred to in the first sentence of" shall be substituted

Amendment of section 24B, Act XI of 1922

29 In section 24B of the said Act,—

(*a*) for sub-section (2) the following sub section shall be substituted, namely —

"(2) Where a person dies before the publication of the notice referred to in sub section (1) of section 22 or before he is served with a notice under sub section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee" ,

(*b*) in sub section (3), the words, brackets and figure "of sub-section (2)" shall be omitted and after the words "and for this purpose may" the following words shall be inserted namely —

", by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived,

Amendment of section 25 Act XI of 1922

30 In section 25 of the said Act,—

(*a*) in sub section (3), after the words "is discontinued" the words "then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered applicable" shall be inserted

(*b*) after sub section (3) the following sub-sections shall be inserted, namely —

"(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939, carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period Where any such claim is made an assessment shall be made on the basis of the income, profits and gains of the said period and, if an amount of tax has already been paid in respect of the income profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference

Act VII of 1939 Certain amendments by Act VII of 1939 These amendments ... n or vocation after the commencement ...

the Amending Act i e after 1st April 1939 the benefit now given by sub section (3) to the owner of a discontinued business assessed under the 1918 Act That benefit is being allowed to substitute the profits from the end of the previous year up to the date of discontinuance for the profits of the previous year is given because otherwise those assessed under the 1918 Act could be assessed for one year more than the number of years the business was in existence Since amendment to section 26 provides that whenever there is a succession the predecessor shall be assessed on the previous year s profits it is necessary to give this relief to the predecessor in the case of succession to a business under the 1918 Act —Notes on Clauses to L 1 Bill No 11 of 1938

(5) No claim to the relief afforded under sub section (3) or sub-section (4) shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be and

(c) existing sub section (4) shall be re numbered sub section (6) and in that sub section so re numbered for the words brackets and figures "sub section (1) or sub section (3)" the words brackets and figures 'sub section (1), sub-section (3) or sub section (4)" shall be substituted

Amendment of section 25A Act XI of 1922

31 (a) In sub-section (1) of section 25A of the said Act, the words that a separation of the members of the family has taken place and' shall be omitted ,

(b) in sub section (2) of section 25A of the said Act, after the words Where such an order has been passed the words or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business profession or vocation shall be inserted, the words separation or shall be omitted and, in the proviso for the words 'separated members and groups of members' the words 'members and groups of members whose joint family property has been partitioned" shall be substituted

Notes — Act VII of 1939 amends section 25A so as to give effect to the principle (given effect to by amendments to section 26) that assessment on the profits of the previous year should be made on the person who received the profits—in this case the disrupted Hindu undivided family —Notes on Clauses to the I A Bill No 11 of 1938

Amendment of section 26 Act XI of 1922

32 In section 26 of the said Act —

(a) in sub section (1), for the words beginning the assessments on the firm" and ending 'proportionate to his interest in the firm the words 'the assessment shall be made on the firm as constituted shall be substituted, and to the said sub section the following provisos shall be added, namely —

Provided that the income profits and gains of the previous year shall for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same

Provided further that when the tax assessed upon a partner can not be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment ,

(b) for sub section (2) the following sub section shall be substituted namely —

'(2) Where a person carrying on any business profession or

vocation has been succeeded in such capacity by another person, such person and such other person shall, subject to the provisions of sub-section (4) of section 25 each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding and such person shall be entitled to recover from the person succeeded the amount of any tax so paid'

Notes—'This section has been amended by s 32 of Act VII of 1939 in order to give effect to the principle that the assessment on the profits of the previous year should be made on the person who received the profits In cases where a firm has changed its constitution or has been newly constituted or where there has been a succession to a business, profession or vocation except in the case of an unregistered firm (where the partners entitled to the profits get credit for the tax paid) the persons who are entitled to receive the profits are to be assessed on them Provision is made for assessment on and recovery of tax from the successor in the case where the predecessor cannot be found or where he will not or cannot pay the tax —*Notes on Clauses to L 1 Bill No 11 of 1938*

Amendment of section 27 Act XI of 1922

33 In section 27 of the said Act, the words "or, in the case of a company, the principal officer thereof" shall be omitted

Amendment of section 28 Act XI of 1922

34 In section 28 of the said Act,—

(*a*) for sub-section (1) the following sub section shall be substituted namely —

"(1) If the Income-tax Officer, the Appellate Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (4) of section 22 or sub section (2) of section 23 or

(*c*) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty, in the case referred to in clause (*a*), in addition to the amount of the income-tax and surper-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in clauses (*b*) and (*c*), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income

Provided that—

(*a*) no penalty for failure to furnish the return of his total

income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub section (2) of section 22 ,

(*b*) where a person has failed to comply with a notice under sub section (2) of section 22 or section 34 and proves that he has no income liable to tax, the penalty imposable under this sub section shall be a penalty not exceeding twenty-five rupees ,

(*c*) no penalty shall be imposed under this sub section upon any person assessable under section 42 as the agent of a person no resident in British India for failure to furnish the return required under section 22 unless a notice under sub-section (2) of that section or under section 34 has been served on him ,

(*b*) in sub section (2) for the words "Assistant Commissioner' the words 'Appellate Assistant Commissioner" shall be substituted , for the words "in addition to the income-tax payable by him the words "in addition to the income tax and super-tax, if any, payable by him" shall be substituted , and for the words 'not exceeding the amount of income tax the words "not exceeding one and half times the amount of income tax and super tax shall be substituted ,

(*c*) in sub section (5), for the words Assistant Commissioner the words "Appellate Assistant Commissioner shall be substituted ,

(*d*) after sub-section (5) the following sub-section shall be added, namely —

'(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner "

Notes —' Act VII of 1939 has amended this section to a considerable extent These changes in the penalty section are designed to give the Income tax Department [illegible] from the ude super turn or to hardship 3s 25 and which is the issue *11 of 1938*

Substitution of new section for section 29 Act XI of 1922

35 For section 29 of the said Act the following section shall be substituted, namely —

'29 When any tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable

Notice of demand

Amendment of section 30 Act XI of 1922

36 In section 30 of the said Act,—

(*a*) in sub section (1),—

(*i*) for the words and figures "or rate at which he is assessed under section 23 or section 27' the words and figures "of income assessed under section 23 or section 27, or the amount of loss computed under section 24 or the amount of tax determined under section 23 or section 27" shall be substituted ,

(ii) after the words and figure "assessment under section 27, or", the word "objecting' shall be inserted, and the words 'against him" shall be omitted ,

(iii) after the word, letter and figure 'section 25A the words, figures and brackets "or sub-section (2) of section 26" shall be inserted, and after the words "made by an Income-tax Officer" the words, letters, figures and brackets "or objecting to any penalty imposed by an Income tax Officer under sub-section (6) of section 44E or sub section (5) of section 44F or sub-section (1) of section 46' shall be inserted ,

(iv) after the words "made by an Income-tax Officer" the following words, figures and letters shall be inserted, namely —

", or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48 49 or 49F, or to the amount of the refund allowed by the Income-tax Officer under any of those sections and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub section (1) of section 23A" ,

(v) for the words 'Assistant Commissioner' the words "Appellate Assistant Commissioner shall be substituted

(vi) for the proviso the following provisos shall be substituted, namely —

"Provided that no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid

Provided further that where partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income

Provided further that a shareholder in a company in respect of which an order under section 23A has been passed by an Income tax Officer, may not in respect of matters determined by such order appeal against the assessment of his own total income

(b) in sub-section (2), after the word and figure "section 27" the words, letters and figures "or of the intimation of an order under sub-section (1) of section 23A or under section 48, 49 or 49F shall be inserted and for the words "Assistant Commissioner' the words "Appellate Assistant Commissioner shall be substituted

Amendment of section 31 Act XI of 1922

37 In section 31 of the said Act,—

(a) for the words "Assistant Commissioner , wherever they occur in the section, the words "Appellate Assistant Commissioner shall be substituted ,

(b) after sub-section (2) the following sub-section shall be inserted, namely —

"(2A) The Appellate Assistant Commissioner may at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable

(c) in sub-section (3) —

(i) in clause (a), after the word assessment the words 'and,

in the case of an assessment on a firm or association of persons, authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association, shall be inserted ,

(ii) in clause (b), after the words "fresh assessment', where they occur for the second time, the words "and determine where necessary the amount of tax payable on the basis of such fresh assessment" shall be added ,

(iii) for the words and figures "section 25 or section 28' the words, figures and letter "section 25 or sub section (1) of section 23A or sub section (2) of section 26 or section 48, 49 or 49F shall be substituted ,

(iv) after clause (d) and before the proviso the following shall be inserted namely —

"or, in the case of an order under sub-section (1) of section 25A,

(e) confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 25A,

or, in the case of an order under section 28 or sub-section (6) of section 44E or sub-section (5) of section 44F or sub-section (1) of section 46,

(f) confirm or cancel such order or vary it so as either to enhance or reduce the penalty ,

or, in the case of an appeal against a computation of loss under section 24,

(g) confirm or vary such computation" ,

(v) in the proviso, after the word "assessment" the words "or a penalty' shall be inserted ,

(vi) after the proviso the following proviso shall be added, namely —

"Provided further that at the hearing of any appeal against an order of an Incame-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative "

Object of amendments—' Act VII of 1939 amends s 31 so as to give power to ... Income ... accor ... es him ... nted at the hearing of an appeal Owing to the institution of separate Appellate Assistant Commissioners it is considered necessary for the department to be so represented ' —*Notes on Clauses*

Amendment of section 32 Act XI of 1922

38 In sub section (1) of section 32 of the said Act, for the words 'Assistant Commissioner" the words 'Appellate Assistant Commissioner" shall be substituted, and for the words, brackets and figures "enhancing his assessment under sub-section (3) of section 31' the words, brackets and figures 'under sub-section (3) of section 31 enhancing his assessment or a penalty imposed under section 28 or sub-section (6) of section 44E or sub-section (5) of section 44F" shall be substituted

Amendment of section 33, Act XI of 1922

39. In sub-section (1) of section 33 of the said Act, for the words "Assistant Commissioner' the words "Appellate Assistant Commissioner shall be substituted, and for the word, brackets

and figure "sub-section (4)" the word, brackets and figure "sub section (5)" shall be substituted

Omission of section 33A, Act XI of 1922

40 Section 33A of the said Act shall be omitted

Amendment of section 34, Act XI of 1922

41 (1) Section 34 of the said Act shall be re-numbered as sub section (1) of that section, and in the section, as so re-numbered,—

(*a*) for the words "for any reason' the words 'in consequence of definite information which has come into his possession the Income-tax Officer discovers that' shall be substituted ,

(*b*) for the words "has escaped assessment in any year, or has been assessed at too low a rate" the words "have escaped assessment in any year, or have been under assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act" shall be substituted ,

(*c*) for the words "at any time within one year" the following shall be substituted, namely —

"in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years and in any other case at any time within four years" ,

(*d*) after the proviso the following proviso shall be added namely —

"Provided further that when the income, profits or gains concerned are income, profits or gains liable to assessment for a year ending prior to the commencement of the Indian Income tax (Amendment) Act, 1939, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under section 43, this sub section shall have effect as if for the periods of eight years and four years a period of one year were substituted "

(2) To the said section, as so re-numbered, the following sub section shall be added, namely —

' (2) No order of assessment under section 23 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry, in any case to which clause (*c*) of sub-section (1) of section 28 applies, of eight years, and in any other case, of four years from the end of the year in which the income profits or gains were first assessable '

Amendment of section 35 Act XI of 1922

42 In sub-section (1) of section 35 of the said Act,—

(*a*) for the words Assistant Commissioner' in both places where they occur, the words 'Appellate Assistant Commissioner' shall be substituted ,

(*b*) for the words 'within one year', in both places where they occur, the words 'within four years" shall be substituted ,

(*c*) for the words demand made upon an assessee' the words 'assessment order passed by him' shall be substituted ,

(*d*) for the words brought to his notice by assessee the words 'brought to his notice by an assessee shall be substituted ,

(e) after the proviso the following proviso shall be added, namely —

"Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939"

Amendment of section 37, Act XI of 1922

43 In section 37 of the said Act, for the words "Assistant Commissioner', in both places where they occur, the words 'Appellate Assistant Commissioner shall be substituted

Amendment of section 38 Act XI of 1922

44 (1) For clause (3) of section 38 of the said Act the following clause shall be substituted, namely —

"(3) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head 'Salaries', amounting to more than four hundred rupees, together with particulars of all such payments made"

Amendment of section 40, Act XI of 1922

45 In section 40 of the said Act, for the words "being in receipt on behalf of such beneficiary of any income" the words "being entitled to receive on behalf of such beneficiary any income" shall be substituted and to the said section the following proviso shall be added, namely —

"Provided that in the case of a beneficiary being a person residing out of British India the tax may be levied upon and recovered from him direct'

Amendment of section 41, Act XI of 1922

46 (1) Section 41 of the said Act shall be re-numbered sub section (1) of that section, and in the section, so re-numbered,—

(a) the words "are received by" shall be omitted,

(b) after the words 'the Official Trustees or" the word 'by" shall be omitted,

(c) after the words "appointed by or under any order of a Court" the words 'or any trustee or trustees appointed under a duly executed trust deed, (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1931), are entitled to receive on behalf of any person" shall be inserted,

(d) after the words 'receiver or manager", where they occur for the second time, the words "or trustee or trustees" shall be inserted,

(e) for the words "any person on whose behalf such income, profits or gains are received" the words "the person on whose behalf such income, profits or gains are receivable" shall be substituted,

(f) the following provisos shall be added, namely —

"Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown the tax shall be levied and recoverable at the maximum rate

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the

income, profits and gains receivable by a beneficiary from the trust in which the part so chargeable bears to the whole ... gains of the trust shall be deemed to have been derived ... that part"

(2) To sub-section (1) of section 41, as so re-numbered, the following sub-section shall be added, namely:—

"(2) Nothing contained in sub-section (1) shall prevent ... direct assessment of the person on whose behalf the ... gains therein referred to are receivable ... person of the tax payable in respect of such income ..."

Amendment of section ... Act XI of 1922. 47. In section 42 of the said Act,—

(i) in sub-section (1),—

(i) for the words "In the case of any person residing out of British India all profits or gains accruing or arising ..." the words "All income, profits or gains accruing or arising" shall be substituted,

(ii) for the words "or property in British India" the following words shall be substituted, namely:—

"in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any money lent at interest and brought into British India in cash or in kind",

(iii) for the words "shall be chargeable to income-tax in the name of the agent of any such person, and" the words "where the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case" shall be substituted,

(iv) in the proviso, for the words "Provided that" the following shall be substituted, namely:—

"Provided that where the person entitled to the income, profits or gains is not resident in British India, the income-tax so chargeable may be recovered by deduction under any of the provisions of section 18 and that",

(v) after the proviso the following provisos shall be added, namely:—

"Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent ... t of any money payable by him to such ... to his estimated liability under this s... of any disagreement between the non-resident person and such agent or person as to the amount to be so retained such agent or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount:

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person."

(*b*) in sub section (2), after the words "Where a person not resident' the words 'or not ordinarily resident' shall be inserted, the words ", and not being a British subject or a firm or company constituted within His Majesty's Dominions or a branch thereof" shall be omitted, the words "or the Assistant Commissioner, as the case may be," shall be omitted, and for the words commencing 'between the resident and the non-resident" and ending "connection with the non-resident' the words "between such persons, the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident' shall be substituted,

(*c*) for sub-section (3) the following sub-section shall be substituted namely —

'(3) In the case of a business of which all the operations are not carried out in British India, the profits and gains of the business deemed under this section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in British India"

Amendment of section 43 Act XI of 1922

48 In section 43 of the said Act,—

(*a*) before the proviso the following proviso shall be inserted, namely —

'Provided that where transactions are carried on in the ordinary course of business through a broker in British India in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions ',

(*b*) in the existing proviso after the word "Provided' the word "further" shall be inserted

Substitution of new section for section 44 Act XI of 1922

49 For section 44 of the said Act the following section shall be substituted, namely —

Liability in case of a discontinued firm or association

"44 Where any business, profession or vocation carried on by a firm or association of persons has been discontinued or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment"

Amendment of section 44C Act XI of 1922

50 In section 44C of the said Act, for the words "in any year' the words in the year shall be substituted

Insertion of new Chapter VB in Act XI of 1922

51 After Chapter V(A) of the said Act the following Chapter shall be inserted, namely —

"CHAPTER V(B)

Special Provisions relating to Avoidance of Liability to Income-tax and Super-tax.

Avoidance of income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad.

42D (1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not resident or to a person resident but not ordinarily resident in British India, acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, that income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of such first mentioned person for all the purposes of this Act

(2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in British India, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act

(3) Sub sections (1) and (2) shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either—

(a) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation, or

(b) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(4) For the purposes of this section, an 'associated operation' means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets

(5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident, or resident but not ordinarily resident, in British India, if—

(a) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first mentioned person, or

(b) the receipt or accrual of the income operates to increase the value to such first mentioned person of any assets held by him or for his benefit, or

(c) such first mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which represent that income, or

(d) such first mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(e) such first mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income

(6) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits

(7) For the purposes of this section—

(a) the expression 'assets' includes property or rights of any kind, and the expression 'transfer' in relation to rights includes the creation of those rights ,

(b) the expression 'benefit' includes a payment of any kind ,

(c) references to income of a person not resident or of a person not ordinarily resident in British India shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under sub section (1) of section 23A, include references to so much of the income of the company for that year or period as is equal to the amount deemed to have been distributed to that person ,

(d) references to assets representing any assets income or accumulations of income include references to shares in or obligations of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred ,

(e) any body corporate incorporated outside British India shall be treated as if it were resident out of British India whether it is so resident or not

(8) The provisions of this section shall apply for the purposes of assessment to income-tax and super tax for the year ending on the 31st day of March, 1940, and subsequent years, and shall apply in relation to transfers of assets and associated operations whether carried out before or after the commencement of the Indian Income tax (Amendment) Act, 1939

(9) Where any person has been charged to tax on any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or in any other form it shall not again be deemed to form part of his income for the purposes of this Act

Avoidance of tax by certain transactions in securities

44E (1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as 'the owner') agrees to sell or transfer those securities, and by the same or any collateral agreement—

(a) agrees to buy back or re acquire the securities or

(b) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person

(2) The references in sub section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re acquired

(3) Where any person carrying on a business which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(a) agrees to sell back or re-transfer the securities or

(b) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business

(4) Sub-section (3) shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities

(5) For the purpose of this section—

(a) the expression 'interest includes a dividend,

(b) the expression securities' includes stocks and shares,

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred

(6) The Income tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days) in respect all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities and if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues

Avoidance of tax by sales cum dividend

44F (1) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to an securities in which, at any time dur

the period specified in the notice he has had any beneficial interest and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty eight days) required by the notice

(2) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements transfers, or any other transactions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent of the amount of the income tax or super tax for any year which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income tax or super tax then those securities shall be deemed to be securities to which sub-section (3) applies

(3) For the purposes of assessment to income tax or super-tax in the case of any such person, the income from any securities to which this sub section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income tax or super tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super tax, or that the provisions of section 44E have been applied in his case in respect of such income

(4) If any person fails to furnish any statement or particulars required under this section or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of the person's total income for the purposes of income-tax or super-tax

(5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues

(6) For the purpose of this section the expression 'securities' includes stocks and shares"

Amendment of section 45 Act XI of 1922

52 In section 45 of the said Act, for the words, brackets and figure "under sub section (4) the words, brackets and figure "under sub-section (3) shall be substituted, and the words, figures

and letter 'or under section 33A" shall be omitted and to the section the following shall be added, namely —

"provided further that where an assessee has been assessed in respect of income arising outside British India in a country the laws of which prohibit or restrict the remittance of money to British India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into British India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed

Explanation —For the purposes of this section income shall be deemed to have been brought into British India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalised or not has been brought into British India in any form "

Amendment of section 46 Act XI of 1922

53 In sub-section (7) of section 46 of the said Act, after the word and figure "section 42" the words and figure 'or of the proviso to section 45 shall be inserted, and for the words "the year" the words 'the financial year" shall be substituted

Amendment of section 47, Act XI of 1922

54 In section 47 of the said Act, after the word and figure "section 28', the words, letters, figures and brackets "sub-section (6) of section 44E sub-section (5) of section 44F" shall be inserted

Substitution of new section for section 48 Act XI of 1922

55 For section 48 of the said Act the following section shall be substituted, namely —

Refunds

"48 (1) If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess

(2) The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall cause a refund to be made by the Income tax Officer of any amount found to have been wrongly paid or paid in excess

(3) Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income

(4) Nothing in this section shall operate to validate any o' or appeal which is otherwise invalid or to authorise the rev any assessment or other matter which has become final and sive, or the review by any officer of a decision of his own

subject to appeal or revision, or, where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income tax (Amendment) Act, 1939, which he would not be entitled to claim but for the passing of that Act"

Omission of section 48A, Act XI of 1922

56 Section 48A of the said Act shall be omitted

Amendment of section 49 Act XI of 1922

57 In section 49 of the said Act,—

(*a*) in sub section (1),—

(*i*) after the word "paid", where it occurs for the first time, the words and figures "by deduction under section 18 or otherwise" shall be inserted, after the word "paid" where it occurs for the second time, the words 'by deduction or otherwise' shall be inserted, and for the words "for that year' the words 'for the corresponding year" shall be substituted,

(*ii*) the following proviso shall be added, namely —

"Provided that in no case shall the rate at which such refund is calculated exceed half the Indian rate of tax appropriate to the income of the person entitled to relief",

(*b*) in sub-section (2), for clause (*b*) the following clause shall be substituted, namely :—

"(*b*) the expression 'Indian rate of tax' means the amount of Indian income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act but before deduction of any relief due to him under this section, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of this Act, added to the amount of Indian super-tax before deduction of any relief due to the claimant under this section divided by his total income,'

Insertion of new sections 49A 49B and 49C in Act XI of 1922

58 After section 49 of the said Act the following sections shall be inserted, namely —

Relief in respect of Indian State and Dominion Income tax

'49A (1) The Central Government may, by notification in the official Gazette, make provision for the granting of relief in respect of income on which has been paid both income-tax (including super tax) under this Act and Dominion income-tax

(2) For the purposes of this section 'Dominion income-tax' means any income tax or super-tax charged under any law in force in any Indian State or in any part of His Majesty's Dominions (other than the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section

Payment of income tax by company to be deemed payment by shareholder

49B Where a shareholder has received a dividend from a company which has paid income-tax imposed in British India or elsewhere, he shall be deemed, in respect of such dividend, himself to have paid the income-tax

(exclusive of super-tax) paid by the company on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company has paid such income tax bears to the whole income of the company

Relief granted to a company to be deemed relief granted to shareholder

49C (1) Where a shareholder has received a dividend from a company which has obtained the relief referred to in section 49 or granted under section 49A or under the India and Burma (Income tax Relief) Order 1936 he shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted in respect of income tax only, to the company for the financial year preceding the year in which the dividend was paid

(2) If the rate at which a shareholder is deemed under sub section (1) to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or Order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under section 23 or section 31 or by setting it off against any relief due to him under section 48

Relief in respect of tax charged in country not providing for relief in respect of British Indian income tax

49D If any person who has paid by deduction or otherwise Indian income tax for any year in respect of any income arising without British India in a country the laws of which do not provide for any relief in respect of income tax charged in British India proves that he has paid income tax by deduction or otherwise under the laws of the said country in respect of the same income he shall be entitled to the deduction from the Indian income tax payable of a sum equal to one half of such Indian income tax or to one half of such tax payable in the said country whichever is the less

Amendment of section 49A Act XI of 1922

59 Section 49A of the said Act shall be renumbered 49E and in that section so renumbered for the words 'Assistant Commissioner the words Appellate Assistant Commissioner shall be substituted

Amendment of section 49B Act XI of 1922

60 Section 49B of the said Act shall be re numbered 49F and in that section so re numbered the word figures and letter or 48A shall be omitted

Amendment of section 50 Act XI of 1922

61 In section 50 of the said Act —

(*a*) after the word income tax the words or super tax shall be inserted,

(*b*) for the words beginning one year from the last day and ending whichever period may expire later the following shall be substituted namely —

four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose accrued or was received or was deemed to have arisen accrued or been received or was brought into British India

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939 the claim shall not be allowed unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (11) of section 2 in which the income arose on which the tax was recovered, whichever period may expire later ' ,

(c) in the existing proviso, after the word "Provided" the word 'further" shall be inserted , after the word and figures "section 49" the words, brackets and figures ' of tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939 ' shall be inserted

Omission of section 50A Act XI of 1922

62 Section 50A of the said Act shall be omitted

Amendment of section 51, Act XI of 1922

63 In clause (c) of section 51 of the said Act, before the word and figures "section 22" the words, brackets and figure ' sub section (2) of" shall be inserted

Amendment of section 52, Act XI of 1922

64 In section 52 of the said Act,—

(a) after the words figures and letter "or section 20A" the words and figures "or section 21' shall be inserted, and the words, brackets figures and letters "or sub-section (2) of section 33A or sub section (3) of section 50A' shall be omitted ,

(b) for the words "be deemed to have committed the offence described in section 177 of the Indian Penal Code" the words ' be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both" shall be substituted

Amendment of section 53, Act XI of 1922

65 In section 53 of the said Act, —

(a) in sub-section (1), for the words "Assistant Commissioner' the words ' Inspecting Assistant Commissioner" shall be substituted ,

(b) for sub section (2) the following sub section shall be substituted, namely —

"(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence '

Amendment of section 54, Act XI of 1922

66 In section 54 of the said Act,—

(a) in the first proviso to sub section (2) the words "Provided that shall be omitted and the proviso shall be numbered as sub-section (3) ,

(b) in sub section (3) so re-numbered,—

(i) after clause (c) the following clauses shall be inserted namely —

' (d) of any such particulars to a Civil Court in any suit to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(*e*) of any such particulars to the Auditor General of India for the purpose of enabling him to discharge his functions under section 144 of the Government of India Act, 1935, or

(*f*) of any such particulars to any officer appointed by the Auditor General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(*g*) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850,* or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry, or" ,

(*ii*) existing clause (*cc*) shall be re-lettered clause (*h*) and for existing clause (*d*) the following clauses shall be substituted, namely ; —

"(*i*) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 49 of this Act to be given, or

(*j*) of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or

(*k*) of such facts, to any authority exercising powers under the Sea Customs Act, 1878,† or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(*l*) of such facts, to a Returning Officer, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(*m*) so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established." ,

(*c*) in the second and third provisos to sub-section (2) the words "Provided further that" shall be omitted and these provisos shall be numbered, respectively, as sub-section (4) and sub-section (5) ;

(*d*) in sub-section (4) so re-numbered, after the words "ptoceeding under" the words, letter and figure "section 25A or" shall be inserted.

Notes.—"This section is amended by Act VII of 1939. Certain self explanatory clauses are added to the existing clauses which permit such disclosure."—*Notes on Clauses.*

Amendment of section 55, Act XI of 1922

67. In section 55 of the said Act,—

(*a*) for the words "company, unregistered firm or other association of individuals" the words "company, local authority, unregistered firm or other association of persons" shall be substituted,

* XXXVII of 1850. † VIII of 1878.

and after the words "not being a registered firm", the words "or the partners of the firm or members of the association individually," shall be inserted ,

(b) before the existing proviso the following proviso shall be inserted, namely —

'Provided that where under the provisions of clause (b) of sub-section (5) of section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself , ", and

(c) in the existing proviso,—

(i) after the word "Provided" the word "further" shall be inserted ,

(ii) after the words "unregistered firm" the words 'or other association of persons not being a company" shall be inserted ,

(iii) for the words ' an individual having a share in the firm the words 'a partner of the firm or a member of the association, as the case may be," shall be substituted

Notes —' This section has been amended by s 67 of Act VII of 1939 Section 67

68 In section 56 of the said Act, after the word "company" the words "local authority" shall be inserted, and for the words "association of individuals" the words "association of persons" shall be substituted

Amendment of section 56, Act XI of 1922

Omission of section 57, Act XI of 1922

69. Section 57 of the said Act shall be omitted

Amendment of section 58, Act XI of 1922

70 In section 58 of the said Act,—

(a) in sub-section (1) for the words "the proviso" the words 'the second proviso' shall be substituted, and the figures '17', "21" and '48' shall be omitted ard for the words, brackets and figures "sub-sections (2) and (3)' the word, brackets and figure "sub-section (2)" shall be substituted, and for the figures '20', the words, figures and brackets ' and 20 and the first proviso to sub section (1) of section 41 and section ' shall be substituted ,

(b) in sub-section (2), for the wor [illegible] "sub sections (3A), (3B), (3C) and (3D)" [illegible] and letters "sub-sections (2), (2A), (2B), [illegible] be substitued and the word and figures ' section 57 shall be omitted

Amendment of section 58A, Act XI of 1922

71 In clause (b) of section 58A of the said Act,—

(a) in sub-clause (i) the words "individuals or" shall be omitted ,

(b) in sub-clause (ii) the words and figures "or section 11" shall be omitted

72 In section 58B of the said Act, sub-section (2) shall be omitted, and sub-sections (3), (4) and (5) shall re-numbered (2), (3) and (4), respectively, and in sub-section (4) as so

Amendment of section 58B, Act XI of 1922

re-numbered after the word 'recognise' the words 'or an order withdrawing recognition from' shall be inserted

Amendment of section 58F, Act XI of 1922

73. In section 58F of the said Act,—

(a) to sub-section (1) the words 'or six thousand rupees whichever is less' shall be added,

(b) in sub-section (2), for the words beginning "In the accounts of a recognised provident fund" and ending "Such interest shall be exempt from payment of income-tax," the following shall be substituted, namely —

"Interest credited on the accumulated balance of any employee in a recognised provident found shall be exempt from payment of income tax if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and"

Amendment of section 58G, Act XI of 1922

74. In sub-section (3) of section 58G of the said Act, for the words beginning 'from the payment of which" and ending "in addition to any other income-tax" the following shall be substituted, namely —

"and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax

Amendment of section 58K Act XI of 1922

75. In sub-section (2) of section 58K of the said Act —

(a) after the word shall" the following words shall be inserted, namely —

", if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee,",

(b) for the word brackets and figures "clause (iv) the word brackets and figures "clause (iii)" shall be substituted

Insertion of new Chapter in Act XI of 1922

76. After Chapter IX(A) of the said Act the following Chapter shall be inserted, namely —

"CHAPTER IX(B)

SPECIAL PROVISION RELATING TO CERTAIN CLASSES OF SUPERANNUATION FUND

Definitions

58N. In this chapter unless there is anything repugnant in the subject or context,—

(a) 'approved superannuation fund' means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Central Board of Revenue in accordance with the provisions of this Chapter;

(b) 'employer', 'employee' and 'contribution' have, in relation to superannuation funds, the meanings assigned to those expressions in section 58A in relation to provident funds;

(c) ordinary annual contribution means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund

Approval and withdrawal of approval

58O (1) The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 58P and may at any time withdraw such approval if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval

(2) The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect and where the approval is granted subject to conditions those conditions

(3) The Central Board of Revenue shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect

(4) The Central Board of Revenue shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter

Conditions for approval

58P In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied namely —

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in British India

(b) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement or for the widows, children or dependants of persons who are or have been such employees on the death of those persons , and

(c) the employer in the trade or undertaking shall be a contributor to the fund

Provided that the Central Board of Revenue may, if it thinks fit and subject to such conditions if any as it thinks proper to attach to the approval approve a fund or any part of a fund—

(i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or

(ii) if the main purpose of the fund is the provision of such annuities as aforesaid notwithstanding that such provision is not its sole purpose or

(iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in British India

Application for approval

58Q (1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the

instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up The Central Board of Revenue may require such further information to be supplied as it thinks proper

(2) If any alteration in the rules, constitution objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect

Exemption of superannuation fund from income tax

58R Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income tax and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution

Provided further that where a contribution by an employer is not an ordinary annual coutribution it shall for the purposes of this section, be treated, as the Central Board of Revenue may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Central Board of Revenue thinks proper

Treatment of repaid contributions

58S (1) Where any contributions (including interest on contributions if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income tax and super tax to be income of the employee for that year

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment income tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income tax and super tax during the preceding three years or during such period if less than three years as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct

Deduct on from pay of and contributions on behalf of employee to be included in return under section 21

58T Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21

58U. If ... or part of a fund for any reason ceases to be an approved superannuation fund the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

(a) on account of returned contributions (including interest on contributions, if any); and

(b) in commutation of or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the date on which the fund ceased to be an approved fund under the provisions of this Chapter.

58V. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice—

(a) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require;

(b) prepare and deliver to the Income-tax Officer a return containing—

(i) the name and place of residence of every person in receipt of an annuity from the fund,

(ii) the amount of the annuity payble to each annuitant,

(iii) particulars of every contribution (including interest on contributions if any) returned to the employer or to employees, and

(iv) particulars of sums paid in commutation or in lieu of annuities;

(c) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up together with such other information and particulars as the Central Board of Revenue may reasonably require."

77. In sub-section (2) of section 59 of the said Act, sub-clause (ii) of clause (a) shall be omitted, and sub-clause (iii) shall be re-numbered (ii).

Amendment of section 59, Act XI of 1922.

78. In section 60 of the said Act—

(a) in sub-section (2), after the words "twelve months" the [illegible] brackets and figures shall be inserted, namely:— [illegible] the provisions of sub-section (1) of [illegible]; and

[illegible] may think fit" the words "the [illegible]

[illegible] shall [illegible] namely:—

[illegible] the Indian Income-tax (Amendment) [illegible] sub-section (1) shall not be [illegible] the purpose of [illegible] an exemption [illegible]

79. [illegible] of the said Act [illegible] shall be substituted,

Liabilities of trustees on cessation of approval of fund

58U If a fund or a part of a fund for any reason ceases to be an approved superannuation fund the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

(a) on account of returned contributions (including interest on contributions if any), and

(b) in commutation or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter

Particulars to be furnished in respect of superannuation funds

58V The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income tax Officer within twenty one days of the date of such notice—

(a) furnish to the Income tax Officer a return containing such particulars of contributions made to the fund as the notice may require,

(b) prepare and deliver to the Income tax Officer a return containing —

(i) the name and place of residence of every person in receipt of an annuity from the fund,

(ii) the amount of the annuity payble to each annuitant,

(iii) particulars of every contribution (including interest on contributions if any) returned to the employer or to employees, and

(iv) particulars of sums paid to commutation or in lieu of annuities

(c) furnish to the Income tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Central Board of Revenue may reasonably require"

Amendment of section 59 Act XI of 1922

77 In sub-section (2) of section 59 of the said Act, sub clause (ii) of clause (a) shall be omitted, and sub-clause (iii) shall be re numbered (ii)

Amendment of section 60 Act XI of 1922

78 In section 60 of the said Act —

(a) in sub section (2), after the words 'twelve months the following words brackets and figures shall be inserted, namely —

or a payment which is under the provisions of sub section (1) of section 7 a profit in lieu of salary, and

for the words such relief as it may think fit' the words "the appropriate relief" shall be substituted,

(b) the following sub section shall be added, namely —

'(3) After the commencement of the Indian Income tax (Amendment) Act 1939, the power conferred by sub section (1) shall not be exercisable except for the purpose of rescinding an exemption, reduction or modification already made"

Substitution of new section for section 61, Act XI of 1922

79 For section 61 of the said Act the following section shall be substituted, namely —